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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE ET AL.,
PETITIONERS,

vs.

SANITARY GROCERY CO., INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED OCTOBER 18, 1937.

CERTIORARI GRANTED NOVEMBER 22, 1937.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 18, 1938.

—3504

[fol. 1] [Captions omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Equity No. 61165

SANITARY GROCERY COMPANY, INC., a Corporation, Plaintiff,

vs.

THE NEW NEGRO ALLIANCE, a Corporation, and WILLIAM H. HASTIE, Individually and as Administrator and as a Member of the New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of the New Negro Alliance, a Corporation, Defendants

BILL OF COMPLAINT—Filed April 10, 1936

[fol. 2] To the Honorable, the Supreme Court of the District of Columbia, Holding an Equity Court:

Your Petitioner, Sanitary Grocery Company, Inc., a corporation, respectfully represents unto the Court as follows:

1. That it is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in, and having its main office in, the District of Columbia, and brings this suit in its own behalf.

2. That the defendant, The New Negro Alliance, is a corporation organized and existing under and by virtue of the laws of the District of Columbia and is sued in its own right; that the defendant, William H. Hastie, is administrator of the said New Negro Alliance, a corporation, and is sued in his own right and as administrator of the said New Negro Alliance, a corporation, whose members are too numerous to be sued individually; that defendant, Harry A. Honesty, is Deputy Administrator of the said New Negro Alliance, a corporation, and is sued in his own right and as the Deputy Administrator of the New Negro Alliance; that the latter two named Defendants are of full age and are residents of the District of Columbia.

3. That plaintiff now is, and for a long time has been, successfully engaged in the business of operating stores for

the retail sale of groceries, vegetables, meats, fruits, and other products usually sold in grocery stores and has from time to time increased the number of such stores and now owns and operates in the District of Columbia, to wit, 255 retail stores at which such merchandise is sold, such stores being operated under the name of "Sanitary"; "Sanitary Grocery Company" "Sanitary Grocery Company, Inc."; or "Piggly Wiggly"; Plaintiff also owns and operates one warehouse and one bakery, located in the District of Columbia, that Plaintiff employs a large number of persons in its business, including both whites and negroes.

4. That, after extensive advertising, plaintiff opened on the morning of Friday, April the third, 1936, a new retail grocery and meat market at 1936 Eleventh Street, Northwest, in the District of Columbia. The personnel in said new store consisting of a manager and clerks, who were transferred from a closed store in the immediate neighborhood and who have a wide acquaintance with the trade in [fol. 3] the vicinity of the new and closed stores; plaintiff has done and is doing a large volume of business in its other stores and has built up and enjoys a valuable good will resulting from the successful prosecution of its business.

5. That defendant corporation, The New Negro Alliance is composed of colored persons, its purpose as stated in its Certificate of Incorporation, filed with the Recorder of Deeds of the District of Columbia, on, to wit, November 18th, 1933, being for the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises.

6. That the Defendants have heretofore made arbitrary and summary demands upon the Plaintiff Corporation, through its officers, agents and employees, that it engage and employ colored persons in managerial and sales positions in the said new store at 1936 Eleventh Street, Northwest and various other of Plaintiff's stores. It is essential and necessary for the proper conduct of Plaintiff's business that it employ experienced employees in the said store so located at 1936 Eleventh Street and in its several other stores in managerial and sales positions, and the arbitrary demands as aforesaid, if complied with, will require plaintiff to discharge its said white employees and to replace them with colored employees. It is imperative that Plain-

tiff in the operation of its business shall have the free and unhampered selection and control of persons employed by it without interference by the Defendants or any other persons or organizations whatsoever.

7. That the Defendants have written letters to the Plaintiff in which are contained threats of boycott and ruination of the Plaintiff's business, and notices that by means of announcements, meetings, and advertising, the defendants will circulate statements that Plaintiff is unfair to colored people and to the colored race and that the Plaintiff does not employ colored employees, (even though this is contrary to fact), unless it accedes to the said arbitrary demands as aforesaid of the said defendants.

8. The Plaintiff Corporation has not acceded to, and should not be called upon to accede to the demands of the defendants.

9. Upon the refusal of the Plaintiff to comply with the demands as hereinbefore set forth, the Defendants, their members, representatives, officers, agents, servants, and [fol. 4] employees have unlawfully conspired with each other to picket, patrol, boycott and ruin the Plaintiff's business in said stores, and particularly in the store located at 1936 Eleventh Street, Northwest; the said defendants have, in an effort to fulfill their threats of coercion and intimidation, actually have caused the said store to be picketed or patrolled during hours of business of the plaintiff, by their members, representatives, officers, agents, servants, and employees; said persons so picketing or patrolling carrying large placards containing legible printing charging the Plaintiff Corporation with being unfair to negroes. The said signs or placards containing the following language, to wit: "Do Your Part! Buy Where You Can Work! No Negroes Employed Here!", for the purpose of intimidating and coercing prospective customers from entering the Plaintiff's store until such time as the Plaintiff Corporation accedes to the aforesaid demands of the Defendants. Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and

prevent persons from entering plaintiff's place of business; said defendants, their pickets or patrols are disorderly while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business. Defendants have threatened to use similar tactics of picketing and patrolling as aforesaid in front of the several other stores of the plaintiff.

As evidence of the widespread and concerted action planned by the Defendants herein, they have caused to be placed or have permitted to appear in the Washington Tribune, a semi-weekly publication of general circulation for negroes, located at 920 U Street, Northwest, in its edition of Friday, March 27, 1936, and appearing in large black type on the front and second pages, the following statements:

[fol. 5] "Says Sanitary is Firing Negro Personnel—Organization Plans to Picket Unless Demands are Met."

Prompt and speedy action taken by the New Negro Alliance, meeting in executive session on Thursday evening, at the offices of the buy-where-you-can-work organization, 1333 R Street, Northwest, indicated that the group is preparing to set in motion a boycott of a series of Sanitary Stores located in colored neighborhoods, should the chain store firm fail to show intentions of rehiring colored clerks, claimed to have been displaced, and hire colored clerks in new stores planned in colored belts in the city.

Many members of the executive counsel of the New Negro Alliance reported at the meeting, complaints by consumers, because of dismissal of colored clerks at a branch of the Sanitary Store Company, located on T Street, Northwest, near Seventh. Other consumers' complaints were reported from the Forty-fourth and Sheriff Road, Northeast, area; Twelfth and T Streets, Northwest, section; and Vermont and S Street, Northwest neighborhood. In all of these locations are branches of the Sanitary Grocery chain.

Though expecting a satisfactory reply and an acceptable adjustment of the employment of colored clerks in branch stores, located in colored sections, the New Negro Alliance

voted immediate steps to inform its many members and the complaining consumers of failure of proceedings which would bring about active boycott of the series of chain stores of the firm under fire. Saturday, April 4, the date of the regular public meeting of the buy-where-you-can-work organization, has been set as the limit for satisfactory adjustment."

And appearing in the said Washington Tribune, in its edition dated April 3rd, 1936, Friday, the defendants caused or permitted to be placed on the First and Second pages, the following:

"Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks.

"Manager of Chain States that Firm Does Not Contemplate Hiring Colored.

[fol. 6] "Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood."

"Pickets carrying signs reading "Will Negroes Work Here?" took positions in front of a Sanitary Grocery Store, in the 1900 block (Ours, meaning plaintiff's store located at 1936 Eleventh Street, Northwest) of Eleventh Street, Northwest, Wednesday afternoon when the management of the grocery chain stated that no Negroes would be employed in the store when it opens on Saturday.

The campaign to not patronize the store is being sponsored by the New Negro Alliance.

Conducting Canvas

The Alliance is conducting a house-to-house canvas in the vicinity of the new store and residents in the neighborhood are being urged to "buy where you can work."

In a recent statement the Alliance said that the Sanitary Store at Sixty and T Streets, Northwest formerly employed Negroes as clerks, but there are no Negro clerks there now. The statement read. Dozens of Negro-supported Sanitary stores have never employed Negro clerks. Among these are the stores at Eleventh and Kenyon Streets, Twelfth and T Streets and Vermont Avenue and S Street.

Students to Aid

Creston Honesty and James Leftwish were the pickets on the opening day of the campaign. Students from the

Howard University School of Pharmacy will work as pickets the rest of the week. The Alliance is headed by William Hastie, member of the District bar and assistant solicitor in the Interior Department.

In explaining the campaign the Alliance stated that

"For two years the Negro Alliance has been trying to get Negro clerks in the Sanitary Stores. During our campaign with another chain store sometime ago the Sanitary Company employed a few Negro clerks, here and there. Though we have repeatedly requested this company to employ additional clerks, not only have they failed to do this but they have failed even to maintain the small number of jobs formerly made available for Negroes.

[fol. 7] "The present campaign aims to deal with the new store at E-veneenth and U Streets, and the neighboring stores at Eleventh and T Streets and Vermont Avenue, and Eleventh Street, Northwest, because they are a group within a single neighborhood. The Sixth and T Streets store is included because it is a large and important store which formerly employed Negroes but does not do so now. The Eleventh and Kenyon Store represents a neighborhood project of the people in that area which was enthusiastically undertaken last fall and should be revived now that the spring season makes greater activity possible."

And appearing in the said Washington Tribune under date of April 7th, 1936, the defendants caused or permitted to be placed, an article appearing on the first and third pages, the following:

"Warns Against White Aproned "Errand" Boys.

"No Let Up in Campaign Against Chain that Refuses Clerk Jobs."

At the regular public meeting of the New Negro Alliance, held in the assembly room of the Y. M. C. A., on Saturday evening, William Hastie, administrator of the buy-where-you-can-work organization, warned against consumers regarding "errand boys in white aprons" as clerks during the last few days in branch stores of the Sanitary Grocery Store Company now under ban.

He indicated that an investigation by the Alliance would determine the true status of the "clerks" in the chain stores

at T Street, between Sixth and Seventh Streets, Northwest, and at Vermont Avenue and S Street, Northwest.

Gratified at Response

Though gratified with general public response to the picketing of the branch of the Sanitary Store, located in 1900 block of Eleventh Street, Northwest, the sentiment at the meeting showed every indication of no letup in the active campaign of the chain stores located in colored neighborhoods, until the requests by the New Negro Alliance for colored clerks has been fully met by Sanitary Grocery store officials.

[fol. 8]

Shortage of Man Power Seen

Pickets were stationed in front of the chain store branch in 1900 block of Eleventh Street, Northwest, Wednesday afternoon, bearing signs reading "Will Negroes Work Here?" The store opened to the public on Saturday. A total of fifteen persons, including several prominent women picketed during the first three days of the campaign. On Saturday, the signs carried by the pickets read "Buy Where You Can Work—No Negroes Employed In This Store—Stay Out Until Negro Clerks are Hired." It was reported that a "comparative few thoughtless persons" made purchases at the new chain store.

Because all of the active members of the New Negro Alliance or persons interested in the cause are employed during the day, it was decided that early evening convassing of neighborhoods—with stores under ban would continue. Pickets would be placed in front of branches of the Sanitary chain on Saturdays, when the buying at the stores is calculated as being at peake.

Murray Warns Against Action.

George H. Murray, instructor at Armstrong High School, and prominent civic worker, was the guest speaker at the public meeting of the Negro Alliance.

Introduced to the audience by George Rycraw, chairman of the organization's public relations committee, Mr. Murray warned that "minority groups cannot resort to direct action to get desired results." He urged indirect action and said, "In business, the approach to economic solutions must be peaceful."

The speaker regarded the activities of the buy-where-you-can-work organization as "not peaceful, but hostile." He pointed out that "the reversal of the boycott by the Alliance would squeeze the life blood of the Negro."

Cites Employer's Right

Mr. Murray concluded his speech by saying that the employer has the right to hire whom he pleases in his establishment.

During the discussion which followed the educator's address, it was brought out that all initial approaches made by the New Negro Alliance, though based upon astonishing results of surveys by the organization, were peaceful; [fol. 9] that "hostilities" set in after peaceful negotiations failed; that consumers have the right to say who shall be employed in branches of chain stores they support; that the New Negro Alliance represents effective consumers' organization and that a branch store employing colored clerks represents a "setting up of a Negro business" as it is the will of the Negro consumers that colored persons be employed as clerks."

The attached photographs which were taken in front of premises 1936 Eleventh Street, on Saturday, April 4th, 1936, shows the picketing which is being carried on by the defendant. Plaintiff exhibits 1, 2, 3, & 4.

10. That the condition created by Defendants herein has caused to exist a situation which will continue to exist until such time as Plaintiff corporation accedes to the demands, as aforesaid, of defendants, and which is and which will continue to be dangerous to the life and health of persons in the public highways, to property thereon, and to the plaintiff's employees, its property and business, to the irreparable injury of life, health, and property.

11. That plaintiff further shows to this Honorable Court that there is not pending between the plaintiff corporation and the defendants herein, or any of them, or between the plaintiff corporation and any other person or persons or organization or groups of persons, any dispute concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, and the relation of employer

and employees does not exist between the plaintiff corporation and defendants or any of them; that defendants are not nor are any of them, an organization of employees; that the defendants are not engaged in competitive business with the plaintiff and that the officers, members, or representatives of defendants are not engaged in the same business or occupation of the plaintiff or its employees.

12. That the subject matter of this Bill of Complaint does not involve a labor dispute within the meaning and provisions of any Federal or local statutes made and provided relative to such labor disputes.

13. That the plaintiff corporation herein apprehends and fears that unless, restrained and enjoined by this Honor-
[fol. 10] able Court, the threatened acts of violence hereinabove referred to, will be executed and that other acts of violence will occur, and that the unjust and unlawful acts of the several defendants herein referred to, will be continued and aggravated, with consequent demoralization of the business of the plaintiff and of its employees; that this plaintiff further shows to this Honorable Court that the various acts of the defendants herein above referred to are unlawful and illegal and violative of constitutional guarantees of the plaintiff, and constitute a combination and conspiracy in restraint of trade and commerce in the District of Columbia. The Plaintiff further shows to the Court that unless restrained and enjoined by this Honorable Court, the business and good will of the plaintiff's business will be destroyed and its investment therein wholly lost, and that its customers and patrons and prospective customers and patrons will be so deferred and intimidated as to cause them to refrain from or to cease patronizing the plaintiff corporation and the plaintiffs employees and such other persons as the plaintiff may from time to time desire to employ will be prevented, deterred, and hindered from entering into or continuing in employment by the plaintiff all to the irreparable injury and damage of the plaintiff.

The premises considered, and the plaintiff being threatened with immediate and irreparable damage, loss and injury, and being without plain adequate and complete remedy by law, accordingly prays:

1. That a writ of subpoena issue against said defendants named herein and each of them, requiring them by

a day certain, to appear herein and answer the exigencies of this Bill of Complaint.

2. That a temporary restraining order issue, restraining the defendants, their members, officers, agents, servants, and employees, from

(a) Picketing or patrolling, or causing to be picketed or patrolled any and all of the premises occupied by plaintiff.

(b) Boycotting, or causing or urging other persons or organizations to boycott or to refrain from transacting business with plaintiff.

(c) Announcing, advertising or in any manner calling attention to the contention that the plaintiff is unfair to colored people or to the colored race.

[fol. 11] (d) In any manner, whether by inducements, threats, intimidation or by the actual or threatened use of physical force, dissuading, preventing, or hindering persons who desire or intend to enter the places of business or any of them of the plaintiff, from entering into the same, or from transacting business with the plaintiff.

(e) Destroying or damaging, or threatening to destroy or damage any of the physical property of the plaintiff.

(f) Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

3. That the defendants, their members, officers, agents, servants, and employees be restrained and enjoined, pendente lite and permanently, from

(a) Picketing or patrolling, or causing to be picketed or patrolled any and all of the premises occupied by plaintiff.

(b) Boycotting, or causing or urging other persons or organizations to boycott or to refrain from transacting business with plaintiff.

(c) Announcing, advertising, or in any manner calling attention to the contention that the plaintiff is unfair to colored people or to the colored race.

(d) In any manner, whether by inducements, threats, intimidation or by the actual or threatened use of physical force, dissuading, preventing, or hindering persons who desire or intend to enter the places of business or any of them of the plaintiff, from entering into the same, or from transacting business with the plaintiff.

(e) Destroying or damaging, or threatening to destroy or damage any of the physical property of the plaintiff.

(f) Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

4. That such rule or rules to show cause issue as may be requisite.

5. And that plaintiff may have such other and further [fol. 12] relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

Sanitary Grocery Company, Inc., by Mack L. Langford, Vice Pres. A. Coulter Wells, Attorney for Plaintiff.

Duly sworn to by Mack L. Langford. Jurat omitted in printing.

(Here follow two photostats, side folios 13 and 14.)

Exhibits to bill of complaint


BEV

[fol. 15] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 15, 1936

* * * * * * *

Come now the three defendants above named and for their joint and several answers to the plaintiff's bill in the above encaptioned cause say:

1. Defendants have no knowledge of the corporate status, domicile and principal place of business of the plaintiff and require strict proof thereof as may be material to this cause.

2. Defendants admit the allegations of fact contained in paragraph 2 of plaintiff's bill.

3. Defendants admit that plaintiff is engaged in the retail grocery business in the District of Columbia and that both whites and Negroes are employed in that business; but defendants have no knowledge of the detailed facts concerning plaintiff's business as further alleged in paragraph 3 of plaintiff's bill and require strict proof thereof as may be material to this cause.

4. Defendants admit that on Friday, April 3, 1936, defendant opened a retail grocery store at 1936 Eleventh Street, Northwest, in the District of Columbia and that the manager of said store is an employee transferred from a closed store in the immediate neighborhood. Upon information and belief the defendants deny that the clerks in the new store were transferred from said closed store. Defendants have no knowledge of the other matters of fact pleaded in paragraph 4 of plaintiff's bill and require strict proof thereof as may be material to this cause.

5. The provisions of the Certificate of Incorporation of the New Negro Alliance are a matter of public record in the District of Columbia.

6. Defendants deny the allegations of fact contained in paragraph 6 of plaintiff's bill and say that from time to time the defendant New Negro Alliance and the defendants Hastie and Honesty, both acting as agents of the defendant corporation and in no other capacity, have requested that the plaintiff in the regular course of personnel changes in

its retail stores give employment to Negroes as clerks, particularly in those stores patronized largely by colored people. Defendants further say that they have not requested the discharge of any white employees of the plaintiff nor have they sought any action by the plaintiff which would require the discharge of any white employees.

7. Defendants deny the allegations in paragraph 7 of plaintiff's bill and says that the only representations which the defendant corporation or any of its authorized agents have threatened to make are true representations that named stores of the defendant do not employ Negroes as sales persons, and that the only action threatened by the defendant corporation or any of its authorized agents has been the lawful and peaceable persuasion of members of the community to withhold patronage from particular stores after the plaintiff has refused even to acknowledge requests that it adopt a policy of employing Negro clerks in such stores in the regular course of personnel changes.

[fol. 16] 8. Defendants admit that plaintiff has not employed any Negro clerks in its new store as requested by the defendant corporation. Defendants say further that such further allegations as are contained in paragraph 8 of the plaintiff's bill are not properly pleaded allegations of fact and that the defendants ought not be required to make answer thereto.

9. Defendants admit that defendant corporation did on Saturday, April 4, 1936, but at no other time cause the store of plaintiff at 1936 Eleventh Street, Northwest, to be continuously picketed during that day by a single person carrying a placard exhibiting the wording alleged by the plaintiff. Defendants admit that the defendant corporation has heretofore and prior to the acts herein complained of picketed or expressed the intention of picketing two other stores of the plaintiff. Defendants admit that the pictures which are exhibits to plaintiff's bill accurately depict the conditions in the vicinity of plaintiff's store throughout the period of picketing on April 4, 1936, and the manner in which the agents of defendant corporation conducted themselves during said picket. The defendants deny the other allegations of fact contained in paragraph 9 of plaintiff's bill and say that the facts are as follows:

The information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in

fact coerce or intimidate customers of the plaintiff. None of the defendants nor any picket or other person acting on behalf of any of the defendants has physically hindered, obstructed, interfered with, delayed or harassed persons desiring to enter the place of business of the plaintiff, or acted in a disorderly manner or caused or encouraged crowds to gather in front of plaintiff's store. Defendants further say that they have not joined with each other or with any other person or persons in any conspiracy whatever. None of the defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article or news item whatsoever or in any way acted in concert with the Washington Tribune in said publications.

10. Defendants deny the allegations of fact in paragraph 10 of plaintiff's bill.

[fol. 17] 11 and 12. Defendants admit that the relation of employer and employee does not exist between plaintiff and any of them and that the defendants are not engaged in competitive business with plaintiff. Defendants deny the other allegations of fact in paragraphs 11 and 12 of plaintiff's bill and say that the controversy between plaintiff and defendant corporation is a dispute concerning "negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment" as the quoted phrase is used in the Act of March 23, 1932, and that the said controversy is a "labor dispute" within the meaning of that phrase as used in the Act of March 23, 1932. Defendants say further that the discontinuance of the services of Negro clerks in stores of plaintiff's is a matter in dispute between plaintiff and defendants.

13. Defendants say that the matters alleged in paragraph 13 of plaintiff's bill are not allegations of fact and that defendants ought not be required to make answer thereto, and therefore, defendants neither admit or deny such allegations but will require strict proof thereof insofar as may be material to this cause.

Wherefore, having answered fully the exigencies of plaintiff's bill of complaint, the defendants deny that plaintiff is entitled to the injunction prayed for or to any other relief, and pray judgment that said bill of complaint may be dis-

missed and that plaintiff take nothing by his suit, and that defendants may go hence without costs.

The New Negro Alliance, Inc., by William H. Hastie, Administrator. Harry A. Honesty. B. V. Lawson, Jr., and William H. Hastie, Esquire, in proper person, Attorneys for Defendants.

Duly sworn to by Wm. H. Hastie and Harry Honesty. Jurat omitted in printing.

[fol. 18] IN UNITED STATES DISTRICT COURT

MEMORANDUM OPINION—Filed June 19, 1936

* * * * * * *

The question presented is one of considerable importance. For a long time we have faced a sort of warfare between groups that operate industry, between those who have the ownership of the business, and those who labor in industry. Argument among themselves and struggle and contest among them are still going on. Strikes, boycotts, picketing, lockouts and blacklists have been weapons of this industrial warfare. The situation has resulted in many laws being passed designed to aid peace and order in this most disturbed part of the social life of the country.

Here it is suggested that it is proper and lawful for this kind of contest to be adopted by other groups not directly interested in any way in the industry or business itself.

There are three sources of many of the disorders that have existed in the world for centuries. One has been sectionalism. Different parts of a country may have prejudices against each other; and the same situation may exist between neighboring states.

Another has been religious prejudice. Countless difficulties have arisen among religious groups.

Another source of difficulty lies in racial prejudicies. Not necessarily different races, but also among groups of different descent, such as Germans and Frenchmen, Jews and Gentiles.

These prejudices arising out of sectionalism, religion and race have given rise to all kinds of misfortunes and disasters, revolutions and many of the evils that nations have had to deal with.

Fortunately for us in this country, for a long time we have [fol. 19] been able to get along in an orderly way so far as sectional, religious and race prejudices are concerned. We have been able to get along very peaceably and harmoniously.

As suggested to counsel this morning, let us take one of our neighbors who lives out at Takoma Park, for instance, A Seventh Day Adventist, who runs a shop and business out there, and prefers to employ men of his own denomination. He uses his right to employ whom he pleases. His contract is between him and his employee. Now, suppose the Methodists in the neighborhood form an organization and say, "We are going to boycott you unless you agree to employ our people in your shop instead of your own. We will close up your business. We will march our pickets up and down before your shop and tell people not to have anything to do with you."

We can at once see that that would engender a great storm center in the neighborhood, or prejudice and trouble likely to lead to disturbance and conflict, and therefore it would be of vital concern to the public.

Let such a scheme be carried out by religious denominations with interference in and coercion through picketing of individual business generally and what a great zone of disturbance and difficulty would be created.

The same in the case of sectionalism. We do not have much of that left in this country, but we used to have a lot of it; and we might find in this city, for example, many people from the South who could band together and say, "We are going to make every business man in this city employ nobody but Southern people. We will picket and boycott every place of every man unless he agrees to hire southern people."

What would be the inevitable result of such combinations of people to coerce others in matters with respect to which they have no right to interfere.

It is the same with races. Should the white people say to the man who employs colored help in his shop, "You must put white men in there," and put pickets out to parade up and down to see that these colored employees are turned out and white people are employed in their place?

If we reverse that illustration, and suppose that a group of colored men say, "We are going to picket and to boycott

you unless you turn out your white employees or unless you [fol. 20] cease hiring them and employ colored people", that can only tend to lead to the same kind of trouble, the same kind of race disturbances, difficulties and disasters. It seems to me it is clearly along the wrong line—such combinations of people that are trying to interfere by coercion with the business of somebody else.

Of course nobody can make somebody else deal with him. Everybody has a right to deal where he pleases. He does not have to deal with a man for any reason. He may not like his eyes or his clothes or his name or his race. That is his business.

But it is a different thing when combinations are formed for the purposes of coercing people as to how they shall operate their business.

So I think it would be very unfortunate if this zone of trouble should be extended from the economic zone in which we are already having so much trouble, into the sectional or religious or racial zones.

I do not believe that the laws that relate to labor disputes have any application to this case. I do not think there is any analogy between the zones. They are entirely separate fields; and for that reason I think that not only does the law not apply, but the citations of authorities that have been made with respect to labor controversies have no analogy here. We must all work for better advancement all along the line. That cannot be achieved through any particular group of this kind trying to impose restraints or to interfere by coercion in the conduct of the business of other citizens.

I think the injunction ought to be granted in this case, and I will sustain the bill on the authority of the King case (266 Fed. 257, 260), and the Beck case (42 L. R. A., 407). You can, of course, take the case to the Court of Appeals. It may be well to have that court's view in this case to help us all have a clearer conception of just what the rights and duties of citizens are with respect to matters of this kind.

Joseph W. Cox, Justice.

Orally announced June 19th, 1936.

[fol. 21] IN UNITED STATES DISTRICT COURT

PERMANENT INJUNCTION—Filed June 24, 1936

* * * * * * *

This cause came on to be further heard at this term, upon the Bill of Complaint and the Answer thereto, and having been fully argued and considered, and it appearing to the satisfaction of the Court that unless permanently enjoined, the Defendants, herein, their officers, agents, servants, employees, their attorneys and those in active concert or participating with them, will unlawfully picket or cause to be picketed or patrolled premises occupied by the Plaintiff Corporation, known as 1936 Eleventh Street, Northwest, in the District of Columbia, and other of the stores occupied by the Plaintiff Corporation herein in the transaction of its business, and will by inducements, threats, intimidation or by actual or threatened use of force, dissuade, prevent, hinder, or interfere with persons desiring or intending to enter the places of business operated by Plaintiff Corporation from entering into the same, and will threaten to use, or actually use physical force against the customers, prospective customers, agents, or employees of the Plaintiff, and will damage or destroy or threaten to damage or dest*o*ry the physical property of the Plaintiff and will cause unlawful and disorderly gatherings and assemblies, or will do or threaten to do said acts or any of them as a consequence of which the lives and health of persons in public highways, the Plaintiff's officers, employees, agents, and customers and the Plaintiff's property will be endangered and the ill will so aroused in the public mind will be such as to cause immediate and irreparable injury, loss and damage to the Plaintiff Corporation, It is by the Court this 24th Day of June, A. D. 1936:

Adjudged, Ordered and Decreed that the Defendants, the New Negro Alliance, Inc., William H. Hastie, and Harry A. Honesty, their officers, agents, servants, employees, attorneys and those in active concert or participating with them, be, and they hereby are, permanently and finally restrained and enjoined from:

[fol. 22] 1. Picketing or patrolling, or causing to be picketed or patrolled any and all of the stores and premises occupied by plaintiff;

2. Boycotting or causing or urging other persons or organizations by threats to boycott or to refrain from transacting business with Plaintiff;

3. In any manner, whether by inducements, threats, intimidations, or by the actual or threatened use of physical force, preventing or hindering persons who desire or intend to enter the places of business or any of them of the Plaintiff from entering into the same or from transacting business with the Plaintiff;

4. Destroying or damaging, or threatening to destroy or damage any of the physical property belonging to or under the control of the Plaintiff herein;

5. Doing or threatening to do any or all of the foregoing acts or things, whether individually or in concert with each other, or with others, and from aiding, abetting, assisting, or advising other persons to do or threaten to do said acts or any of them.

And it is Further Ordered and Decreed that the undertaking heretofore given by the Plaintiff herein in the sum of One Thousand Dollars ($1,000), conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to be wrongfully enjoined hereby, be and the same is hereby continued in full force and effect.

Joseph W. Cox, Justice.

Seen: A. Coulter Wells, Attorney for Plaintiff; William H. Hastie, Attorney for Defendants.

RECITAL AS TO EXCEPTION AND APPEAL

To the above final judgment, decree and injunction the defendants, in open court, duly except, and note their appeal to the United States Court of Appeals for the District of Columbia and appeal bond is fixed in the sum of $100 or in lieu thereof $50 in cash.

Joseph W. Cox, Justice.

[fol. 23] MEMORANDUM

July 13, 1936. Bond ($100) on appeal approved and filed.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed July 14, 1936

* * * * * * *

Now come the defendants and assign for review to the United States Court of Appeals for the District of Columbia on appeal in the above-entitled cause the following errors committed by the trial court:

1. The court erred in finding actual or threatened interference with plaintiff or its customers by defendants through force, threats, disorderly assemblage and destruction of property.

2. The court erred in ruling in effect that the provisions of the Act of March 23, 1932, concerning the issuance of injunctions in cases involving labor disputes are not applicable to this case.

3. The court erred in ruling in effect that as a matter of general law the acts of peaceful picketing and patrolling admitted by defendants' answer are unlawful.

4. The court erred and denied to the defendants their Constitutional rights of free speech and personal liberty in restraining them from boycotting plaintiff's business.

5. The court erred in issuing a permanent injunction restraining the defendants from picketing and patrolling in the vicinity of plaintiff's places of business and from boycotting plaintiff's business.

6. The court erred in failing to dismiss plaintiff's bill.

B. V. Lawson, Jr., William H. Hastie, Attorneys for Defendants.

Service of copy acknowledged this 13th day of July, 1936.

A. Coulter Wells, Attorney for Plaintiff.

[fol. 24] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD—Filed July 14, 1936

* * * * * * *

The clerk will please prepare a transcript of record to be transmitted to the United States Court of Appeals for the District of Columbia pursuant to the appeal taken in the above entitled cause and include therein the following:

1. The bill of complaint
2. The answer
3. The permanent injunction with notation of appeal
4. The assignments of error
5. This designation

Wm. H. Hastie, B. V. Lawson, Jr., Attorneys for Defendants.

Service of copy acknowledged this 13th day of July, 1936.

A. Coulter Wells, Attorney for Plaintiff.

IN UNITED STATES DISTRICT COURT

ADDITIONAL DESIGNATION OF RECORD—Filed July 16, 1936

* * * * * * *

Now comes the Plaintiff, Sanitary Grocery Company, Inc., a corporation, appellee in the above entitled cause, by its Attorney of record, A. Coulter Wells, and directs the Clerk in making up the transcript of record on appeal in said cause, to include the following papers and proceedings in addition to those designated by Counsel for the appellant, namely:

1. The opinion of the Court.
2. This Designation.

A. Coulter Wells, Attorney for Plaintiff.

Service of copy acknowledged this — day of July, A. D., 1936.

B. V. Lawson, Jr., of Counsel for Defendant.

[fol. 25] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 26] Monday, April 12th, A. D. 1937.

No. 6836

THE NEW NEGRO ALLIANCE, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

vs.

SANITARY GROCERY COMPANY, INC., a Corporation

The argument in the above entitled cause was commenced by Mr. Belford V. Lawson, Jr., attorney for appellants, and was continued by Messrs. William E. Carey, Jr., and A. Coulter Wells, attorneys for the appellee, and was concluded by Mr. Belford V. Lawson, Jr., attorney for appellants.

[fol. 27] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6836

THE NEW NEGRO ALLIANCE, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

v.

SANITARY GROCERY COMPANY, INC., a Corporation, Appellee

Appeal from the District Court of the United States for the District of Columbia

B. V. Lawson, Jr., of Washington, D. C., for Appellants.

A. Coulter Wells and William E. Carey, Jr., both of Washington, D. C., for Appellee.

Argued April 12, 1937. Decided July 26, 1937

Before Martin, Chief Justice, and Robb, Van Orsdel, Groner and Stephens, Associate Justices

VAN ORSDEL, Associate Justice:

This appeal is from a final order and decree of the District Court of the United States for the District of Colum-

bia, permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

The single question here involved is whether appellants who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in the sales positions connected with the operation of its business.

The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to [fol. 28] enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats of boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: picketing in front of the store with signs containing the words—DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE! —; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted

encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee "IS FIRING NEGRO PERSONNEL—ORGANIZATION PLANS TO PICKET UNLESS DEMANDS ARE MET", and again "SANITARY STORE PICKETED BY ALLIANCE FOR REFUSAL TO EMPLOY NEGRO CLERKS", and again, "HOUSEWIVES BEING CANVASSED BY GROUP BUY-WHERE-YOU-CAN-WORK CAMPAIGN CARRIED TO RESIDENTS IN NEIGHBORHOOD"; and again, "that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to 'buy where you can work'."

The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does not exist and likewise admits that the parties are not engaged in competitive business.

Appellants' appeal in this Court is grounded on their claim that peaceful picketing is not illegal.

The legislatures and the courts have gone far in sustaining peaceful picketing where labor disputes are involved. By the rather sweeping Act of March 23, 1932 (47 Stat. 70; Secs. 101-115, T. 29, U. S. C.) the Congress prohibited the federal courts from restraining peaceful picketing in cases involving "labor disputes".

Sec. 13 of the Act (Sec. 113, T. 29, U. S. C.) defines "labor disputes", as comprehended within the terms of the Act, as follows:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or

when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the [fol. 29] same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

We agree with the trial court that the instant controversy does not involve a labor dispute within the statute. In this view the distinction between pickets attempting by verbal persuasion to interfere with the business of and to prevent dealing with the establishment boycotted, and pickets silently displaying cards bearing inscriptions intended to accomplish the same object, is of little importance, since both constitute an interference not only with the business boycotted but with the public use of the street. Its purpose in either case when induced by concerted action on the part of a great mass of people is so to interfere with the business of appellee as to compel it to surrender its free right to choose its employees and to conduct its business in whatever lawful manner it may elect. These are rights of which it cannot be deprived under the facts and circumstances here disclosed.

The tendency of the picketing and the action taken to make it effective disclosed in this case is to deter peaceful citizens, both men and women, from entering the appellee's place of business, and to deprive them of their lawful rights. To say under such circumstances that the picket consists of nothing more than a peaceful endeavor to prevent customers from entering the boycotted place is to make a statement at

variance with the facts. Cf. Truax v. Corrigan, 257 U. S. 312.

With the admission of appellants that there is no relation of employer and employee existing, and that appellants are not engaged in a competitive business with appellee, the case narrows down to whether or not appellants come within subparagraph (c) of the above-quoted statute, and in conducting this picketing are attempting to negotiate, fix, maintain, change or arrange terms or conditions of employment. As we have said, we think that the statute will not admit of so broad a construction. Every person conducting a legitimate business is entitled to select his own employees. When employees are selected and become engaged in the business, then any differences which may arise between the employer and employee, or any organization in which the employee may be a member, may come within the provisions of the statute, but until such relation becomes established no ground exists for what may be called a labor dispute. If appellants are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the appellants, if upheld, might be carried.

We are clearly of the opinion that this is not a labor dispute. It is a racial dispute in which appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help. In A. S. Beck Shoe Corporation v. Johnson, 274 N. Y. S. 946, an association of negroes picketed stores of the shoe corporation, bearing [fol. 30] signs reading, "An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play." These signs were similar to the placards carried by the pickets in the instant case. The court in that case said:

"The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.

"It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"* * * The acts of the defendants are irreparably injurying the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business."

The court in that case was considering a situation identical with that here presented, and the reasoning of the court in its opinion we regard as sound.

In a case analogous to the instant case, Green v. Samuelson, 168 Md. 421, there was involved the picketing of stores in a colored section of the City of Baltimore by an organization of negroes similar to the appellant corporation. In that case the Court of Appeals of Maryland, in upholding the issuance of an injunction, said (pp. 425-6, 429):

"So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the Circuit Court of Baltimore City a similar bill was filed in New York (*Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274, N. Y. S. 946), and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction.

* * * * * * *

"In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined, * * *."

However commendable the purposes of the appellants may be in attempting to improve the condition of their race, they are not, in carrying out such purposes, justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott. To sustain such action on the part of an organization established merely to advance the social standing of its race would be in complete disregard of fundamental principles of public policy, and cannot be supported upon any principle of law, equity or justice.

The decree is affirmed.

Josiah A. Van Orsdel, Associate Justice.

[fol. 31] Stephens, Associate Justice, dissenting in part, concurring in part:

I dissent from the dictum of the majority that no labor dispute exists within the meaning of the Norris-LaGuardia Act [47 Stat. 70] until differences arise between the employer and the employee or any organization in which the employee may be a member. Cinderella Theater Co. v. Sign Writers' Local Union, 6 F. Supp. 164; Dean v. Mayo, 8 F. Supp. 73; cf. Levering & Garrigues Co. v. Morrin, 71 F. (2d) 284, certiorari denied 293 U. S. 595; see Legislation Note, The Norris-LaGuardia Act: Cases Involving or Growing Out of a Labor Dispute (1937), 50 Harv. L. Rev. 1295. The dictum would exclude from the operation of the Norris-LaGuardia Act a dispute between two unions as to the right to represent employees, the employer being indifferent as to the result, and would also exclude from the operation of the Act a dispute as to unionization between a union and an employer of exclusively non-union labor. Neither of such types of disputes is involved in the instant case, and we should therefore not even in dictum rule concerning them.

I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for the trial court in effect to order the appellants to trade at the appellee's store.

I concur with the majority in the conclusion that in the instant case the Norris-LaGuardia Act does not prevent the issuance of an injunction. The dispute in the instant case is not, I think, a labor dispute within the definition given to that phrase in the Norris-LaGuardia Act—even under

the most liberal construction of that Act. E. g., Cinderella Theater Co. v. Sign Writers' Local Union, Dean v. Mayo, Levering & Garrigues Co. v. Morrin, all supra. See Legislation Note, supra, 1301 n. 32. Therefore the trial court had jurisdiction to issue an injunction.

I feel bound to concur further with the majority in the conclusion that in the instant case the injunction was properly issued. I do so with reluctance for I think courts should be cautious indeed in limiting application of the general proposition so happily stated by Justice Hofstadter, in Julie Baking Co. v. Graymond, 152 Misc. 846, 274 N. Y. Supp. 250:

> The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the state, in that it serves as a safety valve in times of stress and strain. * * * [152 Misc. at 847; 274 N. Y. Supp. at 251-252.]

But this proposition was uttered in a case which though it did not involve a labor dispute also did not involve a racial dispute. It was a dispute between a neighborhood organization and a bakery concerning alleged extortionate prices.

How far a right may be exercised, or how far it is proper to limit its exercise, is a question of policy and one which, however delicate, must nevertheless be determined by courts according to their best judgment—in the absence of some controlling statute The questions of policy involved in picketing in labor disputes have been thought by Congress, [fol. 32] in the Norris-LaGuardia Act, and by many courts, to operate against restraint of peaceful picketing.[1] Peace-

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[1]The Norris-LaGuardia Act denies jurisdiction to enjoin "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." 47 Stat. 71. And see the following decisions: Senn v. Tile Layers' Protective Union, U. S. Sup. Ct. (May 24, 1937) 4 U. S. L. Week 1211; Iron Molders' Union v. Allis-Chalmers Co., 166 Fed. 45; Exchange Bakery & Restaurant, Inc. v. Rifkin, 245 N. Y. 260, 157 N. E. 130.

ful picketing has been recognized as legal, however, not upon the theory that it is not an invasion of another's right but upon the theory that it is a justifiable invasion. As said by Mr. Justice Holmes in Aikens v. Wisconsin, 195 U. S. 194, 204:

> * * * prima facie, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law * * * requires a justification if the defendant is to escape.

And, as said the same author in Privilege, Malice, and Intent (1894), 8 Harv. L. Rev. 1, 9:

> * * * when a responsible defendant seeks to escape from liability for an act which he had notice was likely to cause temporal damage to another, and which has caused such damage in fact, he must show a justification. The most important justification is a claim of privilege. In order to pass upon that claim, it is not enough to consider the nature of the damage, and the effect of the act, and to compare them. Often the precise nature of the act and its circumstances must be examined. It is not enough, for instance, to say that the defendant induced the public, or a part of them, not to deal with the plaintiff. * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed. * * *

The problem of policy has also been well put thus:

> The truth to be dealt with is that every measure upon which a labor union relies for acceptance of its demands, involves the curtailment of some temporal interest of employer, non-union employee, and frequently the public. * * *
>
> * * * * * * *
>
> The damage inflicted by combative measures of a union—the strike, the boycott, the picket—must win immunity by its purpose. But neither this nor any formula will save courts the painful necessity of deciding whether, in a given conflict, privilege has been overstepped. The broad questions of law—what are permissible purposes and instruments for damage,—and the intricate issues of fact to which they must be applied, together constitute the area of judicial discretion within which diversity of opinion finds ample scope. * * * [Frankfurter and Greene: The Labor Injunction (1930), at 24, 25.]

One of the main factors of policy which must be weighed in judicial determination of whether an injunction shall issue to restrain picketing is the probability of violence in the particular circumstances involved. The decisions legitimatizing peaceful picketing in labor disputes have been based in part upon the proposition that picketing can be carried on in such manner as not imminently to endanger the public peace and safety, and in part upon the further proposition that the likelihood of violence in picketing in labor disputes is not sufficient to overweigh the public interest in picketing as one means of accomplishing improvement of labor conditions. In the instant case, the factor of the likelihood of violence operates I think to require an opposite conclusion. The dispute here is in essence and emphasis not a labor dispute but a racial dispute. True, it is a racial dispute concerning hiring, and has thus in a broad [fol. 33] sense to do with a question of labor; but this does not make it less racial in essence and in insistence. Violence in racial disputes is, as a matter of common knowledge, highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful.

[fol. 34] Monday, July 26th, A. D. 1937

April Term, 1937

No. 6836

The New Negro Alliance, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants,

vs.

Sanitary Grocery Company, Inc., a Corporation

Appeal from the Supreme Court of the District of Columbia

This cause came on to be heard on the transcript of the record from the District Court of the United States for

the District of Columbia, formerly Supreme Court of the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court, now District Court, in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Van Orsdel.

July 26, 1937.

Dissenting opinion per Mr. Justice Stephens.

[fol. 35] IN THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 6836

THE NEW NEGRO ALLIANCE et al., Appellants,

vs.

SANITARY GROCERY COMPANY, INC., Appellee

DESIGNATION OF RECORD

The clerk will please, in preparation of the transcript of record on Petition for Writ of Certiorari to the Supreme Court of the United States, include therein:

1. Record.
2. Minute entry of the argument.
3. Opinion.
4. The decree.
5. Copy of this Designation.
6. Clerk's certificate.

B. V. Lawson, Jr., Thurman L. Dodson, Edward P. Lovett, Attorneys for Appellants.

Service of copy acknowledged this 13th day of Sept., 1937.

A. Coulter Wells, Attorney for Appellee. W.

[fol. 36] [Endorsed:] No. 6836. In the Court of Appeals for the District of Columbia. The New Negro Alliance et al., Appellants, vs. Sanitary Grocery Company, Inc., Ap-

pellee. Designation of Record. United States Court of Appeals for the District of Columbia. Filed Sep. 14, 1937. Moncure Burke, Clerk. B. V. Lawson, Jr., Attorney for Appellants, 2001 11th St., N. W., Po. 5725.

[fol. 37] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

I, Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 36, inclusive, constitute a true copy of the transcript of the record and proceedings of the said Court of Appeals as designated by counsel for appellants in the case of The New Negro Alliance, a Corporation, and William H. Hastie, Individually and as Administrator and as a Member of The New Negro Alliance, a Corporation, and Harry A. Honesty, Individually and as Deputy Administrator and as a Member of The New Negro Alliance, a Corporation, Appellants, vs. Sanitary Grocery Company, Inc., a Corporation, No. 6836, April Term, 1937, as the same remain upon the files and records of said Court of Appeals.

In Testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 14th day of September, A. D. 1937.

Moncure Burke, Clerk of the United States Court of Appeals for the District of Columbia. (Seal United States Court of Appeals for the District of Columbia.)

[fol. 38] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 22, 1937

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,992. U. S. Court of Appeals, District of Columbia. Term No. 511. The New Negro Alliance et al., petitioners, vs. Sanitary Grocery Co., Inc. Petition for a writ of certiorari and exhibit thereto. Filed October 16, 1937. Term No. 511, O. T., 1937.

FILE COPY

Office - Supreme Court, U. S
FILED
OCT 16 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioner,

vs.

SANITARY GROCERY CO., INC., A CORPORATION.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

BELFORD V. LAWSON, JR.,
THURMAN L. DODSON,
EDWARD P. LOVETT,
Counsel for Petitioners.

INDEX.

Subject Index.

Table of Cases Cited.

Statement.

This case involves the construction and interpretation of Section 13 of the Act of March 23, 1932 (47 Statute 70), called The Norris-LaGuardia Labor Disputes Act, as limiting the jurisdiction of Federal courts in restraining peaceful picketing in cases involving labor disputes as defined by that Act.

The case arises upon an appeal from a final order and decree from the District Court of the United States for the District of Columbia, permanently enjoining the New Negro Alliance, a Corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting a particular retail grocery store of the Sanitary Grocery Stores, Inc., or any other store of the Sanitary Grocery Stores, Inc., in the District of Columbia. The question was heard and finally disposed of upon the bill and answer (see opening statement of permanent injunction, R. 21).

The respondent, the Sanitary Grocery Co., is a corporation operating a number of retail grocery stores in the District of Columbia. The petitioner, New Negro Alliance, is a membership corporation organized for the betterment and mutual advancement of its members. William H. Hastie and Harry A. Honesty (hereinafter designated as "defendant officers") were, when the case was filed, Administrator and Deputy Administrator of the New Negro Alliance. The present controversy arose out of a request made by the petitioners upon the respondent through the petitioners' officers on behalf of persons seeking employment that the respondent adopt a policy of employing Negro clerks in certain of its retail grocery stores. The refusal of the respondent to grant or even acknowledge such requests

and the discontinuance of the employment of Negro clerks in certain stores of the respondent are the matters in controversy.

The actual conduct of which the respondent complains and upon which this suit was founded was the *peaceful patroling of a single person in front of one of the respondent's stores on a single day.* This person acted on behalf of the petitioner and carried a placard exhibiting the legend, "DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE!" It is stated and admitted in the record that "the information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in fact coerce or intimidate customers of the respondent" and that none of the petitioners nor any picket or other person acting on behalf of any of the petitioners has physically hindered, obstructed, interfered with, delayed, or harassed persons desiring to enter the place of business of the respondent, or acted in a disorderly manner or caused or encouraged crowds to gather in front of the said store. Throughout the period of picketing the situation was substantially that revealed by photographs which were exhibits to the respondents' bill and appear in the present record (R. 13, 14, 16).

It is also set out in the record that the petitioners were not party to any conspiracy (R. 16); that the acts complained of other than to make the aforesaid requests upon the respondent, and in making such requests they acted solely as agents of petitioners, who were potential employees, consumers, and discharged employees (R. 15, 16); and that the petitioners have not requested the discharge of any present employees of the respondent, but have merely asked that the respondent adopt a policy of giving employment to Negro clerks in the regular course of personnel changes.

Questions of Law Presented.

1. Whether an association of Negroes organized for the purpose of securing better employment opportunities in business enterprises located in Negro residential and business districts and whose patronage is practically 100% Negroes has such "direct or indirect interest therein" in said business enterprises as to precipitate a labor dispute by the said Negro association and the management of said business enterprises when said Negro association endeavors to persuade the management of said business enterprises, by negotiations and peaceful picketing, to adopt a policy of employing Negro clerks in said stores located in Negro communities and supported by them is within the purview of Sec. 13 (a) and (b) of the Norris-LaGuardia Labor Disputes Act passed by Congress, March 23, 1932 (47 Stat. 70)?

2. Whether such dispute as described, *supra* (Questions of Law #1) between the said association and management of a retail grocery store is a labor dispute within the contemplation of Section 13, paragraph c of the said Act, which defines labor disputes as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*"

3. Whether under Section 13 of the said Act of March 23, 1932 (47 Statute, 70), the peaceful patrolling of a single person in front of one of respondent's stores, located in a Negro business district (see R. 14) for the purpose of making known to the public the respondent's refusal to negotiate

with the petitioners "concerning the terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, regardless of whether or not the disputants stand in the proximate relation of employer and employee," is a labor dispute where the respondents have discontinued the services of persons represented by the petitioners and refused to give those persons or other persons of the particular group to which they belonged opportunity for employment in a newly opened establishment?

4. Whether or not the injunction issued by the lower court and sustained by the Appellate Court in its broad and all inclusive scope, which prohibits the petitioner from negotiating, peacefully picketing and boycotting in any capacity (R. 22), nullifies that portion of Section 13, paragraph c, of the Norris-LaGuardia Labor Disputes Act, which specifically provides for the representation of employees?

5. Whether that part of the injunction which enjoins petitioner from boycotting respondent's business and virtually compels and in effect orders petitioner to trade at respondent's store violates the right of personal liberty safeguarded by the Fifth Amendment to the Constitution of the United States?

6. Whether that part of the injunction which enjoins the petitioners from inducing persons not to do business with respondent violates the right of free speech guaranteed by the First Amendment of the Constitution of the United States?

7. Whether as a matter of general Federal law peaceful picketing and patrolling as admitted by the respondent (see R. 13, 14) is illegal?

Reasons for Granting Petition.

1. It is generally conceded, even by the most casual observers of social-economic problems in this country, that the Negro group, being the marginal class in the economic life of the nation, has been the hardest hit during the period of stress and strain through which we have lately and are still passing. It is equally generally agreed that the present economic plight of the Negro is an integral part of the general social and economic structure of this country. It has become axiomatic that the Negro is the first to be fired and the last to be hired. Denied employment opportunities in many avenues open alike to other citizens and often non-citizens, as a matter of self-preservation, the Negro has been forced to adopt a technique to obtain from those concerns which live by Negro patronage recognition in employment, to which, under all the circumstances, he is justly entitled.

2. This discrimination against Negro labor by concerns situated in Negro communities and supported by Negroes contributes its part toward the pauperization of the Negro and aids in keeping the standard of living for Negroes down and below the level of that of other groups in the population. Since the Negro does not sit on the Boards of Directors of corporations whose enterprises, conducted in Negro communities, help to swell the profits of those corporations, the Negro has been compelled to inaugurate campaigns such as the one complained of in this suit, to persuade the management by negotiations and/or peaceful picketing to give recognition in employment in those concerns which depend for their existence on Negro patronage. To deny the Negro this right is to take from him his only defense against a discriminatory policy which jeopardizes his economic security and dooms him forever to accept the crumbs from the table which his patronage has prepared.

3. Just as it is the concern of the community in general to see to it that the health standards of all groups are raised to, and maintained at, a level of safety so it is the concern of the community that all groups have at least a semblance of economic security. The wealthy inhabitants of Sixteenth Street and Chevy Chase should be as interested in the health standards of poor unfortunate Negroes living in Bland Court and York Alley as in the health standards of their own immediate communities. This is evident when we realize that the persons who handle their foods before it reaches their homes, the cooks who prepare their meals, the nurses who care for their babies, and those who are the care-takers of public and private buildings may come from a diseased-infected court, alley or community. In like manner, if Negroes are denied employment, they become a public charge, swell relief rolls, increase the prison population, and even endanger the personal safety of all citizens, the costs in all instances being borne from the purses of citizens apparently far removed from it all. To deny the Negro the right to work for an honest living is tantamount to denying him the right to live.

4. In recent years there has been a steady drive to increase and to better conditions of employment. There has been developing what is referred to as a larger pattern of social justice. During this time peaceful picketing and the boycott have been universally used to improve conditions of employment. These devices have been used also to force employers to recognize particular unions and their right to organize within the ranks of employees even before the relationship of employer and employee had actually been established. Or, expressed in other language, unions composed of non-employees have used the device of picketing industrial establishments to force the management to grant them the opportunity to organize the employees already in said establishments into unions. Also, unions, frequently

picket establishments which refuse to give employment to persons who are affiliated with unions. There appears to be no difference between these situations and the dispute involved in this case other than in this case those seeking to arrange conditions of employment happened to be identified as members of the Negro race. In the equation of justice there is no element of color.

5. The decision of the court below holding this dispute to be simply a racial dispute and, therefore, without the purview of the Norris-LaGuardia Act, is palpably erroneous. The Act was designated to protect "labor disputes" from interference by the injunctive power of the Federal equity court. Simply because the "terms and conditions" of employment happen to include the racial identity of the disputants it is none the less a labor dispute in essence and falls within the language and intent of the Act.

6. This Court cannot possibly allow the dictum of the majority opinion to stand undisturbed, which dictum, as clearly pointed out in the minority opinion, puts a limitation on the scope of the Act which is clearly repugnant to the Act itself.

7. The case here presented is one of great importance to a large segment of the population since it involves the right of Negro labor peacefully to picket. This is especially true since the right peacefully to picket has already been upheld by this Honorable Court.

8. The decision of the court below in holding this to be merely a racial dispute discriminates against the Negro as a group because the sole difference between the present case and those cases cited and relied upon by the lower court as authority is that in the instant case Negro labor has been discriminated against rather than organized labor generally. The nature of the controversy is the same in

either case. To say that the Act governs controversies concerning discontinuance of union labor generally but does not concern discrimination against Negro employees is to read into the Act a limitation which is neither expressly stated nor fairly implied. It is the subject matter of each controversy which determines whether or not a labor dispute is involved, even though the basis of classification of those seeking work or those dropped from the rolls may differ.

9. Grave doubt has arisen in the District of Columbia with respect to the proper construction, interpretation and application of the Norris-LaGuardia Labor Disputes Act and it is respectfully urged that an expression from the Supreme Court of the United States as to whether or not the said statute is applicable to the facts in this case, namely: non-violent, peaceful picketing, by an association seeking to arrange the terms and conditions of employment of prospective employees and of discharged employees.

Belford V. Lawson, Jr.
Thurman L. Dodson,
Edward P. Lovett.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioner,

vs.

SANITARY GROCERY CO., INC., A CORPORATION.

BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the United States Court of Appeals for the District of Columbia was rendered July 26, 1937 (R. 26), and is not yet reported.

II.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered on July 26, 1937.

Jurisdiction of this Court is invoked under paragraph (c) of Section 5, of Rule 38 of the United States Supreme Court and Section 240 of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938.

III.

Statement.

A statement of the facts and the questions involved will be found in the petition for a writ of certiorari (p. 2).

IV.

ARGUMENT.

I.

The record reveals no unlawful act of the petitioners upon which injunctive relief against picketing might be predicated.

It will hardly be disputed that to justify such relief as has been sought and granted in this case there must be both unlawful action by the defendant and injury to the plaintiff. The mere fact of injury, actual or threatened, is not enough. That injury must result from acts which are themselves wrongful. Thus the gravamen of the present complaint is that the defendants have threatened and intimidated customers, indulged in disorderly conduct, joined in an unlawful conspiracy and made false representations about plaintiff and its business, all to the irreparable damage of the plaintiff. In brief, it is alleged that various torts, legal wrongs, have been committed by the petitioners and that a court of equity should enjoin these wrongs because there is no adequate remedy at law. If the denials and allegations of the answer, the truth of which has been admitted upon the present record, show that no such wrongs have been committed, there is no proper basis for the injunction.

a. The records shows no actual or threatened interference with respondent or its customers by petitioners through force, threats, disorderly assemblage or destruction of property.

The answer expressly denies all allegations of tortious conduct. Moreover it is expressly alleged that the peaceful patrolling of a single person upon the public sidewalk in front of the respondent's store during the business hours of one day was the only conduct attributable to the petitioners, or any of them. The exhibits to respondent's bill (R. 13, 14) are accurate pictorial representations of that conduct.

Although a few State courts have taken the position, erroneously it is submitted, that any picketing or patrolling is disorderly and threatening, the settled rule of the Federal courts is that the factual situation of each case determines whether disorder, intimidation or other unlawful conduct is involved in picketing. Thus, in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, this Honorable Court was careful to distinguish between peaceful persuasion, lawful procedure not subject to injunction, and action of intimidating or violent character. This Honorable Court further pointed out that a single picket might lawfully be stationed at each entrance of the establishment in question though a crowd or large number of pickets would be unlawful by reason of their tendency to intimidate. It was in this case that Mr. Chief Justice Taft pointed out that "the purpose of injunction should be to prevent the inevitable intimidation of the presence of groups of pickets but to allow missionaries."

Similarly, in *Davis* v. *Henry*, 266 Fed. 261 (1920), the Circuit Court of Appeals for the 6th Circuit, in setting aside an injunction stated:

> "The order appealed from went too far in enjoining against 'interfering in any way—directly, or indirectly, with the plaintiff—and from picketing highways or means of ingress and egress to and from said plant of

said buggy company'—acts which do not necessarily constitute an unlawful interference."

The court below previously has been careful to limit injunctions against interference with business to the restraining of acts of violence or the coercion or intimidation of customers.

American Federation of Labor v. *Buck's Stove and Range Co., 33 App. D. C. 85;*

Bender v. *Local Union, No. 118, W.L.R. 574.*

It is to be emphasized that this question of whether or not the acts complained of are themselves tortious or otherwise illegal is not dependent upon the relation of the parties or the nature of the controversy. And the Federal doctrine is clear that the peaceful patrolling of a single person in front of a place of business so as to make known a complaint against that business is not of itself a disorderly or intimidating act.

b. The records shows no conspiracy among the petitioners.

The answer categorically denies that the defendants have been party to any conspiracy (R. 16). And there are no undenied allegations of the bill upon which a finding of unlawful concert can be predicated. The individual petitioners were not connected in any way with the picketing. The answer shows that the defendant corporation, and it alone caused the picketing (R. 16) and that the defendant officers did no more than to write to the plaintiff requesting certain changes in employment policies. Quite apart from the legality of these ends, there is no showing whatever that the parties conspired with each other or with any other person or persons.

c. The record shows no misrepresentation of fact.

The record shows, and is not disputed, that the placard carried by the picket told the truth. Indeed, there is no allegation in the bill that the petitioners have made any misrepresentation of fact. It is alleged that the petitioners had threatened to make false representations that the respondent did not employ colored persons (R. 3) but this allegation is denied (R. 15).

d. Cases involving "mass picketing" and other intimidating conduct are distinguishable.

Illustrative of the distinction between the instant case and a case involving intimidation or otherwise unlawful conduct is *Green* v. *Samuelson*, 168 Md. 421. There, in a controversy somewhat similar to the one at bar the court ordered a modification of an injunction restraining all acts interfering with defendant's business, pointing out that the group of Negroes there asserting demands for employment should not be restrained from lawful acts of asserting, publicizing or seeking support for their demands, but merely from mass picketing and acts calculated to intimidate rather than persuade others.

The oral opinion of the trial court (R. 18, 20) relies upon *King* v. *Weiss & Lesh Mfg. Co.*, 266 Fed. 257 as authority for the issuance of the injunction in this case. But in the *King* case mass picketing had resulted in intimidation of employees and the trial court had so found. The Circuit Court of Appeals ruled that the question of intimidation was a question of fact upon which the evidence justified a finding that employees had been intimidated. ***In the present case the facts as set forth by both respondent and petitioner affirmatively show the absence of intimidation.*** Thus the *King* case is a precendent for denying, rather than for granting an injunction in the instant case.

The trial court also relied upon *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497. Though this is a leading case in a jurisdiction far less liberal than the District of Columbia or the Federal jurisdictions generally in permitting picketing, it does not support the present injunction. There had been force and violence, and admittedly so, in the *Beck* case. There had been intimidation. Mass picketing had occurred. The rationale of the decision is that intimidation as well as physical violence may be restrained. There is no intimation that picketing would have been restrained in the absence of intimidation, although violence and intimidation were deemed justification for banning all the acts responsible for such results. Thus, this case is not in conflict with the Federal doctrine of permitting peaceful persuasion through picketing or otherwise in the absence of violence or intimidation.

The only tenable doctrine in cases involving no violence, threats or intimidation has been thus expressed in a case involving picketing by consumers protesting the price of bread at the picketed bakery:

> "I conceive that it is clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation, expressed or implied' and having a lawful purpose should not be enjoined. • • •
>
> "The right of an individual or group of individuals to protest in a peaceful manner against injustice or oppression, actual or fancied, is one to be cherished and not to be prescribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the State in that it serves as a safety valve in times of stress and strain."
>
> *Julie Baking Co.* v. *Graymond*, 274 N. Y. Supp. 250.

To the same effect is a recent Missouri decision:

> "It is said, however, for the City that John Smith, a member of the public, has no right for his own private purposes, whatever they may be, to take his stand for a period of two hours every day upon a particular portion of the street * * *. That he has such a right there can, in our opinion be no question, providing he conducts himself in a peaceful, orderly manner, disturbs no one, and commits no overt act. In this case, according to the testimony of the officer who made the arrest, he arrested the defendant for the purpose of preventing him from doing picket duty. * * * If these defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word of mouth or with pen and print, and to endeavor to persuade others to aid them by all peaceful means, in securing redress of such wrongs, what becomes of free speech, and what of personal liberty * * *?"
>
> *City of St. Louis* v. *Gloner*, 210 Mo. 502.

It is submitted that upon the record the petitioners have done no unlawful act and that, therefore, the injunction against them was improvidently and erroneously issued.

II.

The court erred and infringed the petitioners' rights of free speech and personal liberty by restraining them from "boycotting" respondent's business and peacefully persuading others not to patronize that business.

The paragraph of the permanent injunction numbered "2" (R. 22) contains a general prohibition against "boycotting" respondent's business and paragraph "3" prohibits any "inducement" of persons not to do business with the plaintiff. This language prohibits the defendants from refusing to trade with the plaintiff and prohibits them from peacefully persuading other persons to refrain from trad-

ing with the plaintiff. It is to be noted that these prohibitions are additional to and distinct from the prohibition against picketing.

In modifying a similarly inclusive injunction in *American Federation of Labor* v. *Bucks Stove and Range Co.*, *supra*, the court made the following statement which is as applicable to the present injunction as to the one then under consideration.

> "We have no power to compel the defendants to purchase complainant's stoves; we have no power to prevent defendants, their servants and agents, from preventing others from purchasing from them." (at p. 110).

In the same way the court in *Bender* v. *Local Union*, *supra*, refused to restrain the defendants from their efforts to persuade others not to deal with the plaintiff and found that such acts, if peaceful and not intimidating, are not unlawful.

But the prohibition against refusal to trade with respondent or peacefully persuading others similarly to refuse is not only error as a matter of established principles of equity, it is also a denial of Constitutional rights of personal liberty. In *City of St. Louis* v. *Gloner*, *supra*, the Missouri court held that even a denial of the right to picket peacefully "infringes upon the right of personal liberty, and is unreasonable and oppressive." Similarly, in *Segenfeld* v. *Friedman*, 193 N. Y. Supp. 128, the right of peaceful persuasion, whether through the device of picketing or other means of publication, is described as a Constitutional right.

> "I know of no sound principle of law which prohibits orderly picketing, or that which does not transgress on the rights of others. Indeed, a great body of law affirmatively establishes the opposite proposition. The right to picket is founded on constitutional principles,

and although it might appear that some recent adjudications in certain jurisdictions encroach upon this right, the constitutional, guaranty still survives and must be respected and upheld." (At page 130.)

It is submitted that the trial court restrained acts which Congress itself could not prohibit without infringing the right of free speech guaranteed by the 1st Amendment of the Constitution and the right of personal liberty safeguarded by the 5th Amendment of the Constitution of the United States.

III.

The court erred in holding that the controversy here is not comprehended by the N. L. Act of March 23, 1932.

The preceding argument has been directed to the issues of general law presented by this case quite apart from any statutory restriction upon the jurisdiction of the court. It remains to consider the effect of the Act of March 23, 1932 (47 Stat. 70) which deprives courts of the District of Columbia of power to restrain peaceful picketing in cases involving "labor disputes" as defined in that Act and prescribes procedural prerequisites for the issuance of any injunction in a case involving a "labor dispute." It is not denied that the injunction was issued in this case without compliance with such requirements and that, if this case is within the purview of the statute, the action of the trial court was improvident and in excess to its jurisdiction.

Section 13 of the Act describes the situations involving labor disputes to which the statute applies:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who

are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers (2) between one or more employers or associations of employers and one or more employer and associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined.).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia (March 23, 1932, c. 90, 13, 47, Stat. 73)."

The matters in controversy were (1) the discontinuance of the services of employees of a particular group by the respondent and (2) the refusal of the respondent to give this group opportunity for employment in a newly opened

establishment. Acting on behalf of the group thus discriminated against in employment, the petitioner Alliance is properly deemed to be engaged in a labor dispute within the meaning of the statue. Thus, the record shows that the case "involves conflicting interests in a labor dispute of persons participating or interested therein" as shown by the circumstances that "relief is sought against" the petitioners, that the petitioner Alliance represents persons seeking employment in respondent's business and as such representative has "direct or indirect interest" in the "occupation in which such dispute occurs," and that this dispute is a "controversy concerning the association of persons seeking to arrange terms or conditions of employment."

The fact that none of the petitioners were employees of the plaintiff is immaterial. The courts have been clear in the few cases that have arisen under the 1932 Act that the statute protects so-called "outsiders" attempting to change employment policies even though present employees make no complaint.

Levering and Garrigues Co. v. *Morrin*, 71 F. (2d) 284;
Miller Parlor Furniture Co. v. *Furniture Workers*, 8 F. Supp. 209;
Cinderella Theatre Co. v. *Sign Writers' Local Union*, 6 F. Supp. 164.

The sole difference between the present case and those cited is that Negro labor has been discriminated against rather than organized labor generally. The nature of the controversy is the same in either case. To say that the 1932 Act governs controversies concerning discontinuance of union labor generally but does not concern discontinuance of Negro employees is to read into the Act a limitation that is neither expressly stated nor fairly implied. The

subject matter of each controversy makes it a labor dispute although the basis of classification of those seeking work or those who have dropped from the rolls, may differ.

IV.

Conclusion.

The petitioners respectfully submit that the order of the trial court and the decree of the Court of Appeals be reversed.

Respectfully submitted,

Belford V. Lawson, Jr.,
Thurman L. Dodson,
Edward P. Lovett,
Attorneys for Petitioners.

FILE COPY

SUPREME COURT OF THE UNITED

OCTOBER TERM, 19[illegible]

No. 511

THE NEW NEGRO ALLIANCE, [illegible]

vs.

SANITARY GROCERY CO., INC.

ON WRIT OF CERTIORARI [illegible]

INDEX.

Subject Index.

Table of Cases Cited.

CONSTITUTIONAL PROVISIONS AND STATUTES CITED.

MISCELLANEOUS.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioners,

vs.

SANITARY GROCERY CO., INC., A CORPORATION.

BRIEF FOR THE PETITIONERS.

Opinion Below.

The judgment of the United States Court of Appeals for the District of Columbia was entered on July 26, 1937 (R. 23) and is reported at 64 W. L. R. The Supreme Court of the United States granted the petition for writ of certiorari on November 22, 1937 (R. 34).

Questions of Law Presented.

I.

Whether an association of Negroes organized for the purpose of securing better employment opportunities in business enterprises located in Negro residential and business districts and whose patronage is practically 100% Negroes has such "direct or indirect interest therein" in

said business enterprises as to precipitate a labor dispute by the said Negro association and the management of said business enterprises, when said Negro association endeavors to persuade the management of said business enterprises, by negotiations and peaceful picketing, to adopt a policy of employing Negro clerks in said stores located in Negro communities and supported by them, is within the purview of Sec. 13 (a) and (b) of the Norris-LaGuardia Labor Disputes Act passed by Congress, March 23, 1932 (47 Stat. 70)?

II.

Whether such dispute as described, *supra* (Questions of Law #1), between the said association and management of a retail grocery store is a labor dispute within the contemplation of Section 13, paragraph c of the said Act, which defines labor disputes as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee"?

III.

Whether under Section 13 of the said Act of March 23, 1932 (47 Stat. 70), the peaceful patrolling of a single person in front of one of respondent's stores, located in a Negro business district (see R. 8, 14) for the purpose of making known to the public the respondent's refusal to negotiate with the petitioners concerning the terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employ-

ment, regardless of whether or not the disputants stand in the proximate relation of employer and employee, is a labor dispute where the respondent has discontinued the services of persons represented by the petitioners and refused to give those persons or other persons of the particular group to which they belonged opportunity for employment in a newly opened establishment?

IV.

Whether or not the injunction issued by the lower court and sustained by the Appellate Court in its broad and all inclusive scope, which prohibits the petitioners from negotiating, peacefully picketing and boycotting in any capacity (R. 20), nullifies that portion of Section 13, paragraph c, of the Norris-LaGuardia Labor Disputes Act, which specifically provides for the representation of employees?

V.

Whether that part of the injunction which enjoins petitioners from boycotting respondent's business and virtually compels and in effect orders petitioners to trade at respondent's store violates the right of personal liberty safeguarded by the Fifth Amendment to the Constitution of the United States?

VI.

Whether that part of the injunction which enjoins the petitioners from inducing persons not to do business with respondent violates the right of free speech guaranteed by the First Amendment of the Constitution of the United States?

VII.

Whether as a matter of general Federal law peaceful picketing and patrolling as admitted by the respondent (see R. 8, 12A, 12B) is illegal?

Statement.

This brief is directed to four questions:

1. Whether the case at bar reveals any unlawful act of petitioners upon which injunctive relief against picketing might be predicated;

2. Whether the court below erred and infringed the petitioners' rights of free speech and personal liberty by issuing an injunction against them which is in part an affirmative injunction;

3. Whether the case at bar presents an injunction in a labor dispute as defined in Section 13 of the Norris-LaGuardia Labor Disputes Act;

4. Whether or not a "controversy involving persons or associations of persons negotiating and seeking to arrange terms or conditions of employment in an occupation in which they have a direct and indirect interest" and "against whom relief is sought" is a labor dispute, under the Act notwithstanding the fact that some of the parties to the controversy are Negroes whose patronage supports the particular retail grocery involved.

The District Court of the United States for the District of Columbia held that the instant case was outside the scope of the definitions contained in the Norris-LaGuardia Act and consequently that the petitioners were not entitled to any of the protections of that Act. The court held further that the dispute was a "racial dispute", and affirmatively enjoined the petitioners from peacefully picketing upon considerations totally apart from, and in entire disregard of, the provisions of the Norris-LaGuardia Act. The holding was affirmed by the United States Court of Appeals for the District of Columbia.

The Case at Bar.

The respondent, the Sanitary Grocery Co., is a corporation operating a number of retail grocery stores in the Dis-

trict of Columbia. The petitioner, New Negro Alliance, is a membership corporation organized for the general betterment and mutual advancement of its members. William H. Hastie and Harry A. Honesty (hereinafter designated as "petitioners' officers") were, when the case was filed, Administrator and Deputy Administrator of the New Negro Alliance. The present controversy arose out of a request made by the petitioners upon the respondent through the petitioners' officers on behalf of persons seeking employment that the respondent adopt a policy of employing Negro clerks in certain of its retail grocery stores. The refusal of the respondent to grant or even acknowledge such requests and the discontinuance of the employment of Negro clerks in certain stores of the respondent are the matters in controversy.

The actual conduct of which the respondent complain and upon which this suit was founded was the *peaceful patroling of a single person in front of one of the respondent's stores on a single day.* This person acted on behalf of the petitioners and carried a placard exhibiting the legend, "DO YOUR PART! BUY WHERE YOU CAN WORK! NO NEGROES EMPLOYED HERE!" It is stated and admitted in the record that "the information conveyed by the placard borne as aforesaid was wholly true and was not intended and did not in fact coerce or intimidate customers of the respondent" and that none of the petitioners nor any picket or other person acting on behalf of any of the petitioners has physically hindered, obstructed, interfered with, delayed, or harassed persons desiring to enter the place of business of the respondent, or acted in a disorderly manner or caused or encouraged crowds to gather in front of said store. Throughout the period of picketing the situation was substantially that revealed by photographs which were exhibits to the respondents' bill and appear in the present record. (R., 12A, 12B).

It is also set out in the record that the petitioners were not party to any conspiracy (R., 15); that the acts complained of other than to make the aforesaid requests upon the respondent and in making such requests they acted solely as agents of petitioners, who were potential employees, consumers, and discharged employees (R. 14, 15); and that the petitioners have not requested the discharge of any present employees of the respondent but have merely asked that the respondent adopt a policy of giving employment to Negro clerks in the regular course of personnel changes.

Specification of Errors to be Urged.

I.

The court below erred in holding that as a matter of general Federal Law the acts of peaceful picketing and patrolling admitted on the record (R., 8, 12A, 12B) were unlawful.

II.

The court below erred in holding that that part of the injunction which prohibits the petitioners from inducing persons not to do business with the respondent did not violate the right of free speech guaranteed by the First Amendment of the Constitution of the United States.

III.

The court erred in holding that that part of the injunction which prohibited the petitioners from boycotting the respondent's business and compelling them to trade at respondent's store (R., 20), violated the Fifth Amendment of the Constitution of the United States.

IV.

The court erred in holding that the broad and inclusive language of the injunction prohibiting the petitioners from

negotiating, peacefully picketing and boycotting in any capacity (R., 20) did not nullify that portion of Section 13, paragraph C, of the Norris-LaGuardia Act.

V.

The court erred in holding that an association of Negroes organized for the purpose of securing better employment opportunities in business enterprises located in Negro residential and business districts and whose patronage is practically 100% Negro, did not have such "direct or indirect interest" in said business enterprises as to precipitate a labor dispute between the association and the management of said business enterprises within the purview of Sec. 13 (a) and (b) of the Norris-LaGuardia Labor Disputes Act, March 23, 1932 (47 Stat. 70).

VI.

The court erred in holding that such a controversy as described in the above paragraph was not a labor dispute within the contemplation of Section 13, paragraph c of the Norris-LaGuardia Act, which defines labor disputes as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

VII.

The court erred in holding that the peaceful patrolling of a single person in front of one of respondent's stores, located in a Negro business district (see R., 12A) for the purpose of making known to the public the respondent's

refusal to negotiate with the petitioners "concerning the terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, regardless of whether or not the disputants stand in the proximate relation of employer and employee," was not a labor dispute under Section 13 of the Norris-Laguardia Act, where the respondent had discontinued the services of persons represented by the petitioners and refused to give those persons or other persons of the particular group to which they belonged opportunity for employment in a newly opened establishment.

VIII.

The court erred in affirming the decree of the District Court of the United States for the District of Columbia in issuing the injunction.

The first, second, and third specifications of error will be discussed together and the fourth, fifth, and sixth and seventh will be discussed together.

IX.

The court erred in affirming the decree of the lower court.

Summary of Argument.

I.

The great weight of authority is that where the purpose of the boycott and/or picket is lawful, and they are prosecuted peacefully and orderly; where there is no actual or threatened violence, no unlawful assemblage, fraud, misrepresentation, unlawful conspiracy or intimidation, there is no ground for injunctive relief. The petitioners' conduct was in exact accord with this authority.

II.

The affirmative injunction (R. 20) issued below was error as a matter of established principles of equity and was a denial of the constitutional guaranty of personal liberty.

III.

The definitions of terms provided in the Norris-LaGuardia Act bring the case at bar within its ambit because (1) the petitioners were representing persons seeking employment in respondent's business and as such had a "direct or indirect interest" in the "occupation in which the dispute occurs"; (2) "relief is sought against" the petitioners; (3) the dispute is a "controversy concerning the association of persons negotiating * * * seeking to arrange terms or conditions of employment"; (4) they were concerned with a case which "involves conflicting interests in a labor dispute of persons participating or interested therein". To hold otherwise is to thwart plain Congressional intent, to nullify and frustrate liberal statutory construction and to disregard sound judicial doctrine.

IV.

The District of Columbia is divided into ninety-five tracts. The particular store which gave rise to the case at bar is located in tract forty-five, where there are 3,219 people, of whom 105 are white, 4 are members of other races, and 3,110 Negro. Thus the store's patronage is 96.6 per cent Negro.[1] Denied equal employment opportunities not only in a store supported by his patronage but by the whole community and nation because of conditions over which he has no control the Negro is compelled to use every lawful and peaceful method to gain a bare subsistance.

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[1] Bureau of Census, Department of Commerce. Population Census Tracts, D. C. 1935.

ARGUMENT.

I.

The record reveals no unlawful act of the petitioners upon which injunctive relief against picketing might be predicated.

It will hardly be disputed that to justify such relief as has been sought and granted in this case there must be both unlawful action by the petitioners and injury to the respondent. The mere fact of injury, actual or threatened, is not enough. That injury must result from acts which are themselves wrongful. "Peaceful picketing and honest persuasion in matters of economic and social rivalry is not prohibited. The employer, if threatened in his business life by violence or by other wrongful acts, might have the aid of the court to protect himself from damage threatened by recourse to unlawful means, but the right of workmen to organize to better their condition has been fully recognized. The fact that such action may result in incidental injury to the employer does not in itself constitute a justification for issuing an injunction against such acts. The interests of capital and labor are at times inimical and the courts may not decide controversies between the parties so long as neither resorts to violence, deceit or misrepresentation to bring about the desired result." *Stillwell Theater* v. *Kaplan*, 259 N. Y. 405, 182 N. E. 63, p. 65.

The gravamen of the present complaint is that the petitioners have threatened and intimidated customers, indulged in disorderly conduct, joined in an unlawful conspiracy and made false representations about the respondent and its business, all to the irreparable damage of the respondent. In brief, it is alleged that various torts and legal wrongs, have been committed by the petitioners and that a court of equity should enjoin these wrongs because

there is no adequate remedy at law. If the denials and allegations of the answer, the truth of which has been admitted upon the present record, show that no such wrongs have been committed, there is no proper basis for the injunction. As Mr. Justice Brandeis said in *Senn* v. *Tile Layers Union*, 301 U. S. 468 (1937), "One has no constitutional right to a remedy against the lawful conduct of another". The doctrine of *George B. Wallace* v. *International Auto Mechanics*, 63 P. (2d) 1090 (1936), a case involving a statute patterned after the Norris-LaGuardia Act, that no one has a vested right to the patronage of those who are not in accord with its employment and economic policies, is, in our view, sound.

a. The Record Shows no Actual or Threatened Interference with Respondent or its Customers by Petitioners Through Force, Threats, Disorderly Assemblage, Destruction of Property, Fraud or Misrepresentation.

The answer expressly denies all allegations of tortious conduct. Moreover, it is expressly alleged that the peaceful patrolling of a single person upon the public sidewalk in front of the respondent's store during the business hours of one day was the only conduct attributable to the petitioners or any of them. The exhibits to respondent's bill (R. 12A, 12B) are accurate pictorial representations of that conduct.

Although a few State courts have taken the position, erroneously it is submitted, that any picketing or patrolling is disorderly and threatening, the settled rule of the Federal courts is that the factual situation of each case determines whether disorder, intimidation or other unlawful conduct is involved in picketing. *Fenske* v. *Upholsterer's International Union*, 193 N. E. 112, 120, 121; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184.

Quite apart from the Norris-LaGuardia Act the broad terms of the injunction in this case, virtually ordering the

petitioners to trade at the respondent's store (R. 20), violated the Constitutional guaranty of free speech and was contrary to the General Federal Law. Thus, in the *Tri-City* case, *supra*, this Honorable Court was careful to distinguish between peaceful persuasion, lawful procedure not subject to injunction and action of an intimidating or violent character. This Honorable Court further pointed out that a single picket might lawfully be stationed at each entrance of the establishment in question though a crowd or large number of pickets would be unlawful by reason of their tendency to intimidate. It was in this case that Mr. Chief Justice Taft pointed out that "persuasion and propaganda" without more is not enough for injunctive relief, and that "the purpose of injunction should be to prevent the inevitable intimidation of the presence of groups of pickets but to allow missionaries". The petitioners were in a very real sense missionaries, missionaries seeking public support in gaining some measure of relief from economic and social enslavement. The *Tri-City* case, *supra*, though often cited in support of injunctive relief, is express authority against the kind of blanket prohibition of picketing imposed upon the petitioners in the present case.

Similarly, in *Davis* v. *Henry*, 266 Fed. 261 (1920), the Circuit Court of Appeals for the 6th Circuit, in setting aside an injunction stated:

> "The order appealed from went too far in enjoining against 'interfering in any way—directly, or indirectly with the plaintiff—and from picketing highways, or means of ingress and egress to and from said plant of said buggy company'—acts which do not necessarily constitute an unlawful interference."

The court below previously had been careful to limit injunctions against interference with business to the restraining of acts of violence or the coercion or intimidation of customers.

American Federation of Labor v. *Buck's Stove and Range Co.*, 33 App. D. C. 85;
Bender v. *Local Union, No. 118*, W. L. R. 574.

It is to be emphasized that this question of whether or not the acts complained of are themselves tortious or otherwise illegal is not dependent upon the relation of the parties or the nature of the controversy. And the Federal doctrine is clear that the peaceful patrolling of a single person in front of a place of business so as to make a complaint against that business is not of itself a disorderly or intimidating act.

b. The Record Shows no Conspiracy Among the Petitioners.

The answer categorically denies that the petitioners have been party to any conspiracy (R. 14). And there are no undenied allegations of the bill upon which a finding of unlawful concert can be predicated. The individual petitioners were not connected in any way with the picketing. The answer shows that the petitioner corporation, and it alone, caused the picketing (R. 15), and that the petitioner's officers did no more than to write to the respondent requesting certain changes in employment policies. Quite apart from the legality of these ends, there is no showing whatever that the parties conspired with each other or with any other person or persons.

c. The Record Shows no Misrepresentation of Fact.

The record shows, and is not disputed, that the placard carried by the picket told the truth. Indeed, there is no allegation in the bill that the petitioners have made any misrepresentation of fact. It is alleged that the petitioners had threatened to make false representations that the re-

spondent did not employ colored persons (R. 3) but this allegation is denied (R. 14).

d. Cases Involving "Mass Picketing" and Other Intimidating Conduct are Distinguishable.

Illustrative of the distinction between the instant case and a case involving intimidation or otherwise unlawful conduct is *Green* v. *Samuelson*, 168 Md. 421. There, in a controversy somewhat similar to the one at bar the court ordered a modification of an injunction restraining all acts interfering with defendant's business, pointing out that the group of Negroes there asserting demands for employment should not be restrained from lawful acts of asserting, publicizing or seeking support for their demands, but merely from mass picketing and acts calculated to intimidate rather than persuade others.

The oral opinion of the trial court (R. 16, 18) relies upon *King* v. *Weiss & Lesh Mfg. Co.*, 266 Fed. 257, as authority for the issuance of the injunction in this case. But in the *King* case mass picketing had resulted in intimidation of employees and the trial court had so found. The Circuit Court of Appeals ruled that the question of intimidation was a question of fact upon which the evidence justified a finding that employees had been intimidated. In the present case the facts as set forth by both petitioner and respondent affirmatively show the absence of intimidation. Thus the *King* case, like the *Tri-City* case, *supra*, is a precedent for denying, rather than for granting an injunction in the instant case.

The trial court also relied upon *Beck* v. *Railway Teamsters' Protective Union*, 118 Mich. 497. Though this is a leading case in a jurisdiction far less liberal than the District of Columbia or the Federal jurisdictions generally in permitting picketing, it does not support the present in-

junction. There had been force and violence, and admittedly so, in the *Beck* case. There had been intimidation. Mass picketing had occurred. The rationale of the decision is that intimidation as well as physical violence may be restrained. There is no intimation that picketing would have been restrained in the absence of intimidation, although violence and intimidation were deemed justification for banning all the act responsible for such results. Thus, this case is not in conflict with the Federal doctrine of permitting peaceful persuasion through picketing or otherwise in the absence of violence or intimidation. A peaceful picket, free from violence, intimidation and misstatements about the proprietor's business is a perfectly lawful act and one not to be enjoined by any order of court.

The only tenable doctrine in cases involving no violence, threats, or intimidation has been thus expressed in a case involving picketing by consumers protesting the price of bread at the picketed bakery:

> "I conceive that it is clear in reason and principle that picketing not accompanied 'by violence, threats or intimidation, expressed or implied' and having a lawful purpose should not be enjoined. * * *
>
> "The right of an individual or group of individuals to protest in a peaceful manner against injustice or oppression, actual or fancied, is one to be cherished and not to be prescribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the State in that it serves as a safety valve in times of stress and strain."
>
> *Julie Baking Co.* v. *Graymond*, 274 N. Y. Supp. 250.

To the same effect is a recent Missouri decision:

> "It is said, however, for the City that John Smith, a member of the public, has no right for his own private

> purposes, whatever they may be, to take his stand for a period of two hours every day upon a particular portion of the street * * *. That he has such a right there can, in our opinion, be no question, providing he conducts himself in a peaceful, orderly manner, disturbs no one, and commits no overt act. In this case, according to the testimony of the officer who made the arrest, he arrested the defendant for the purpose of preventing him from doing picket duty. * * * If these defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word of mouth or with pen and print, and to endeavor to persuade others to aid them by all peaceful means, in securing redress of such wrongs, what becomes of free speech, and what of personal liberty * * *."
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> *City of St. Louis* v. *Gloner*, 210 Mo. 502.

It is submitted that upon the record the petitioners have done no unlawful act and that therefore the injunction against them was improvidently and erroneously issued.

II.

The court erred and infringed the petitioners' rights of free speech and personal liberty by restraining them from "boycotting" respondent's business and peacefully persuading others not to patronize that business.

The paragraph of the permanent injunction numbered "2" (R. 20) contains a general prohibition against "boycotting" respondent's business and paragraph "3" prohibits any "inducement" of persons not to do business with the respondent. This language prohibits the petitioners from refusing to trade with the respondent and prohibits them from peacefully persuading other persons to refrain from trading with the respondent. It is to be noted that the prohibitions are additional to and distinct from the prohibi-

tion against picketing. Judge Stephens very properly said in his dissenting opinion:

> "I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for the trial court in effect to order the appellants to trade at the appellee's store" (R. 29).

In modifying a similarly inclusive injunction in *American Federation of Labor* v. *Buck Stove and Range Co., supra,* the court made the following statement which is as applicable to the present injunction as to the one then under consideration.

> "We have no power to compel the defendants to purchase complainants stoves; we have no power to prevent defendants, their servants and agents, from preventing others from purchasing from them" (at P. 110).

In the same way the court in *Bender* v. *Local Union, supra,* refused to restrain the defendants from their efforts to persuade others not to deal with the plaintiff and found that such acts, if peaceful and not intimidating, are not unlawful.

But the prohibition against refusal to trade with respondent or peacefully persuading others similarly to refuse is not only error as a matter of established principles of equity, it is also a denial of the Constitutional right of personal liberty. In the *City of St. Louis* v. *Gloner, supra,* the Missouri court held that even a denial of the right to picket peacefully "infringes upon the right of personal liberty, and is unreasonable and oppressive." Similarly, in *Segenfeld* v. *Friedman,* 193 N. Y. Supp. 128, the right of peaceful persuasion, whether through the device of picketing or other means of publication, is described as a Constitutional right. "I know of no sound principle of law which prohibits orderly picketing, or that which does not transgress on the rights of others. Indeed, a great body of law affirmatively

establishes the opposite proposition. The right to picket is founded on constitutional principles, and although it might appear that some recent adjudications in certain jurisdictions encroach upon this right, the constitutional guaranty still survives and must be respected and upheld" (at page 130). The right peacefully to picket is like the right of freedom of speech and freedom of thought and it cannot be denied for it is guaranteed by the First Amendment of the Constitution.

All courts, including the U. S. Supreme Court (*American Steel Foundries* v. *Tri-City and Central Trades Council*, 257 U. S. 184) sustain the right of peaceful picketing.

"The doctrine that picketing is necessarily a species of coercion and intimidation is dogma long since discarded. If merely peaceful picketing were in and of itself coercion, there could never be peaceful picketing for coercion is never lawful." The modern view is that picketing is not *per se* unlawful and should not be enjoined, if peaceably carried on for a lawful purpose." *Bayonne Textile Corporation* v. *American Federation of Silk Workers*, 116 N. J. 146, 172 A. 551. *George B. Wallace Co. et al.* v. *International Auto Mechanics* (*supra*).

In most cases where all picketing has been enjoined, some abuse of the right peacefully to picket has led the courts to say that the only way to stop such abuses is to prohibit the wrongdoers from picketing altogether. One isolated wrong or some abuse of the right to picket is no ground for a sweeping injunction against all picketing. The one outstanding fact in this case is that every necessary element upon which the right to picket is based is present, namely, an actual *bona-fide* dispute, a dispute involving the furtherance and betterment of the common interest of employees and consumers, and a peaceful picket for a lawful purpose. It is through concerted action and collective bargaining that the laborer hopes for some semblance of economic security.

Geo. B. Wallace Co. et al. v. *International Auto Mechanics Union* (*supra*).

"Freedom to conduct a business and freedom to engage in labor, each is like a property right. Threatened and unjustified interference with either will be prevented. But the basis of permissible action by the Court is the probability of such interference in the future, a conclusion only to be reached through proof contained in the record. Unless the need for protection appears, equity should decline jurisdiction." *Exchange Bakery and Restaurant, Inc.*, v. *Rifkin et al.*, 157 N. E. 130. The record in the present case does not contain the requisite proof.

Government of the relations between capital and labor by injunction is a solecism. It is an absurdity. Injunctions in labor disputes are the emergency brakes for rare use and in case of sudden danger. Cf. The Labor Injunction, Frankfurter & Greene.

III.

The court erred in holding that the controversy here is not comprehended by the Norris-LaGuardia Labor Disputes Act of March 23, 1932.

The preceding argument has been directed to the issues of general law presented by this case quite apart from any statutory restriction upon the jurisdiction of the court. It remains to consider the effect of the Act of March 23, 1932 (47 Stat. 70), which deprives courts of the District of Columbia of power to restrain peaceful picketing in cases involving "labor disputes" as defined in that Act and prescribes procedural prerequisites for the issuance of any injunction in a case involving a "labor dispute". It is not denied that the injunction was issued in this case without compliance with such requirements and that, if this case is

within the purview of the statute, the action of the trial court was improvident and in excess of its jurisdiction.

The introduction of the Norris-LaGuardia Labor Disputes Act, purporting to declare the public policy of the United States, recognizes that the individual, unorganized workman under prevailing economic conditions, is commonly in a position of unequal bargaining power unless he is guaranteed full freedom of association and negotiation with his employer. The Act was specifically intended to overcome the restricted constructions of the Clayton Act by the United States Supreme Court, particularly in the *Duplex* v. *Deering*, 54 U. S. 443, and the *American Steel Foundries* v. *Tri-City Cases* (*supra*). It was designed specifically to cover two situations, in addition to those which the Clayton Act aimed to cover, namely: (1) Where the controversy was other than those of hours, wages, and working conditions (*American Steel Foundries* v. *Tri-City* (*supra*); (2) where the dispute was between others than employer and employee (*Duplex* v. *Deering, supra*). The history of the frustration and nullification of the labor provisions of the Clayton Act, 38 Stat. 738 (1914), 29 U. S. C. 52, should insure the salvation of the Norris-LaGuardia Labor Disputes Act, 50 Harv. L. Rev. 1303.

The comprehensive provisions of the Act and the debates in Congress and the House and Senate reports clearly indicate that there was no doubt about the intention of Congress to have the courts protect the substantial, but less obvious, economic interest of the laboring man as well as the interest of the employer. To the argument in *Cinderella Theater* v. *Sign Writers' Local Union* (6 F. Supp.164, 1934), that no labor dispute could exist as the single employe involved in that case was content with existing terms and conditions of employment, the court said that both the express terms of the statute and the Congressional Com-

mittee reports made it clear that the agitating parties could be other than employees.

The report of the House Committee on Judiciary, favoring passage of the bill, reads as follows:

> "Sec. 13 (29 U. S. C. A. 113) contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough to include others than the immediate disputants and thereby corrects the law as announced in the *Duplex* v. *Deering* (*supra*), wherein the Supreme Court reversed the Circuit Court of Appeals and held that the inhibition of Sec. 20 of the Clayton Act (*supra*) only related to those occupying the position of employees or employer and no others."[2]

The language of the report of the Senate Committee on Judiciary, favorably reporting the bill, reads as follows:

> "Sec. 13 of the bill defines various terms used in the Act and it is not believed that any criticism has been or will be made of the definitions.
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> "The main purpose of these definitions is to provide for limiting the injunctive powers of the Federal Courts only in the special types of cases, commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority and wherein the courts have been converted into policing agencies devoted in the guise of preserving peace, to the purpose of aiding employers to coerce employees into accepting terms and conditions of employment desired by employers.
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> "The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable. This is a reasonable exercise of legislative

[2] House Report No. 669, 72d Congress, 1st Session.

power, and in order that the limitation may not be whittled away by refined definitions of what persons are to be regarded as legitimately involved in labor disputes, the bill undertakes specifically to designate those persons who are entitled to invoke the protections of the procedure required.[3]

The Act grants immunity to "interested persons who urge or induce others who are likewise interested and the only express limitations in the Act are the implied prohibitions of fraud or violence or threats of violence."

Section 13 of the Act describes the situations involving labor disputes to which the statute applies in the following language:

"(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers and associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

"(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupa-

[3] Senate Report 1060, 71st Cong., 2nd Sess. Senate Report 163, 72nd Cong., 1st Sess.

tion in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

"(d) The term 'court of the United States' means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia (Mar. 23, 1932, c. 90, 13, 47, Stat. 73)."

Acting on behalf of the group thus discriminated against in employment, the petitioner Alliance is properly deemed to be engaged in a labor dispute within the meaning of the statute. Thus, the record shows that the case "involves conflicting interests in a labor dispute of persons participating or interested therein" as shown by the circumstances that "relief is sought against" the petitioners, that the petitioner Alliance represents persons seeking employment in respondent's business and as such representative has "direct or indirect interest" in the "occupation in which such dispute occurs", and that this dispute is a "controversy concerning the association of persons seeking to arrange terms or conditions of employment".

"The dissenting opinion of the lower court held that the dispute involved was 'in essence' a racial dispute and not a labor dispute. For a group of Jewish workmen to put pressure on a Jewish employer to replace his Italian tailors with Jewish ones would clearly be

a labor controversy, although racial also. The fact that a dispute is racial does not prevent its being a labor dispute as well. The opposite conclusion is more surprising in view of the court's statement that 'Appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help' and in view of Judge Stephens' conclusion that it is a racial dispute concerning hiring, and has thus in a broad sense to do with the question of labor. * * * It is hard to reconcile such a view when the very definition of a labor dispute includes any controversy concerning terms and conditions of employment and especially when the controversy admittedly concerns terms and conditions of employment even though the employer is white and the persons for whom employment is sought are Negroes."[4] "It is not enough * * * to say that the defendant induced the public, or a part of them, not to deal with the plaintiff * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed."[5]

"The desirability of allowing peaceful picketing by labor unions although it injures the trade of the person picketed rests in part on the social advantage of improving the economic position of the union members, which in turn depends in large part on the economic need of working men and their consequent weakness in bargaining. These considerations apply with even greater force to picketing by Negroes. For the last forty years the wages of Negro men have averaged 15 to 50% less than those of white male wage-earners, while Negro women have received from 20 to 40% less, on the average, than white women.[6] 'Both male and female Negro wage-earners are given the heaviest, dirtiest, hottest, wettest, most poisonous, and disagreeable jobs which their skill permits them to fill. Discrimination in favor

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[4] 28 Cornell Law Quarterly (1937), p. 207.
[5] Holmes, Privilege, Malice and Intent (1894), 8 Harv. L. Rev. 1, 9.
[6] Dougherty, Labor Problems in American Industry (1936), p. 495.

of the white workers seems to be common in almost every industry.'[7] The great majority of Negroes are unskilled and employed in unorganized industries, and the racial prejudice of white union members has discouraged the entrance of colored people into established unions.[8] According to the study made in 1929 by the National Urban League, a Negro research group, only 1.5% of all Negroes gainfully employed were members of unions.[9] The high proportion of poverty, destitution, and dependency among Negroes is notorious. The economic advancement of Negroes is quite as clear a justification of picketing as the advancement of union men.

"Judge Stephens declared briefly that: 'Violence in racial disputes is, as a matter of common knowledge,' highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful.' A few years ago, some judges took precisely this position with regard to picketing in labor disputes.[10] It is now generally recognized that those judges were mistaken in their assumptions of fact. It is doubtful whether Judge Stephens' assumption is better founded. The phrase 'racial dispute' is symbolic; it connotes violence because certain familiar types of racial disputes, in certain areas, are violent. It does not follow that all controversies everywhere, to which the same name can be applied, threaten violence. It is unfortunate that Judge Stephens demanded no evidence that the particular acts of the defendants, in the well-policed city of Washington, made violence likely. It is doubly unfortunate because the colored people whom the court restrained were more likely to be the victims than the perpetrators of any possible violence. There

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[7] *Id.*, at 341.

[8] *Id.*, at 495; see also International Juridical Association Monthly Bulletin (October, 1937), p. 46.

[9] Dougherty, Labor Problems in American Industry (1936), p. 495.

[10] See Taft, C. J., in *American Steel Foundries* v. *Tri-City Central Trades Council et al.*, 257 U. S. 184, 42 Sup. Ct. 72 (1921): "The name 'picket' indicated a militant purpose, inconsistent with peaceful persuasion."

> is always an element of irony when peaceful men are denied the privilege of speech lest violent men resent their exercise of it. Decisions like the present one tend to drive unprivileged minorities to more passionate manifestations of group dissatisfaction." [11]

The fact that none of the petitioners were employees of the respondent is immaterial. The courts have been clear in the few cases that have arisen under the Norris-LaGuardia Act that the statute protects so-called "outsiders" attempting to change employment policies even though present employees make no complaint.

American Furniture Co. v. *Chauffeurs, Teamsters and Helpers Local,* 268 N. W. 250, 228 Wis. 332 (1936);
Levering and Garrigues Co. v. *Morrin,* 71 F. (2d) 284;
Miller Parlor Furniture Co. v. *Furniture Workers,* 8 Fed. Supp. 209;
Cinderella Theater Co. v. *Sign Writers' Local Union,* 6 Fed. Supp. 164;
Dean v. *Mayo,* 8 Fed. Supp. 73 (1934):

Notwithstanding the fact that no dispute exists between employer and employee the status of a labor dispute may exist even though employees are unorganized and none belongs to an organization fostering the picket line. *American Furniture Co.* v. *Chauffeurs, Teamsters and Helpers Union* (*supra*); *George B. Wallace et al.* v. *International Association of Auto Mechanics et al.,* 63 P. 2d 1090; *Senn* v. *Tile Layers Union,* 301 U. S. 468 (1937). Recently the American Newspaper Guild picketed advertisers in a newspaper against which it was on strike; in that case the court denied an injunction since picketing and boycotting were within the definition of a labor dispute. In the New York Civil Practice Act [12] which covers any controversy arising out of

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[11] Schoenberg, 23 Cornell Law Quarterly (1937), p. 208.
[12] N. Y. Civ. Prac. Act, 876A, subd. 10 (c).

the respective interests of employer and employee, regardless of whether or not the disputants stand in the relation of employer and employee,[13] this liberal construction of the Norris-LaGuardia Act has been applauded by many commentators.[14] It has been judicially determined that the application of the phrase, "terms or conditions of employment" extends to disputes concerning persons to be employed and policies concerning hiring.

The petitioners' purpose was identical with the purpose of the picket in the *Senn* case (*supra*), namely, "to acquaint the public with the facts, and gain its support," and by so much to induce the public to assist the petitioners in gaining the desired economic end. In that recently decided case this Court said:

> "If the end sought by the union is not forbidden by the Federal Constitution the state may authorize working men to seek to attain it by combining as pickets, just as it permits capitalists and employers to combine in other ways to attain their desired economic ends.
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> "Because his action was harmful, the fact that none of Senn's employees was a union member, or sought the union's aid, is immaterial.
>
> "Each member of a union as well as Senn has a right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. Union members seek to do so through combination. Earning a living is dependent upon securing work; and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means."

Disclosures to the public of annoying facts is not an invasion of liberty granted by the Constitution. *Pa. Railroad Co.* v. *U. S. Railroad Labor Board*, 261 U. S. 72.

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[13] New York Times, Wednesday, Oct. 20, 1937, p. 2.

[14] Notes (1936) 85 U. of Pa. L. Rev. 224, (1936) 84 U. of Pa. L. Rev. 10-27-29, (1937) 50 Harv. L. Rev. 1295.

Thus, the subject matter of controversy had all the elements of a labor dispute—discharge of old employees, refusal to hire new employees out of a certain group, refusal to bargain concerning employment policies and "concerning terms or conditions of employment, the association or representations of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment". The fact that the petitioners acted on behalf of discharged and prospective employees is not disputed. The only element of dissimilarity between this case and other cases which are admittedly labor disputes is the fact that the instrumentality and active agency here is organized for more effective struggle on a broader base than is the traditional labor union. Here, the consumers who support the business and the workers who seek employment are joined in a single organization. And although, as concerns the business of the appellee, the complaining organization is composed of consumers and workers, as concerns the economic discrimination suffered by the racial group to which all belong, the petitioners all stand as workers struggling against a particular manifestation of a policy of economic discrimination which is of vital concern to all. The strange and regrettable aspect of the opinion of the court below is its failure to consider either the plain Congressional intent, the concise, unequivocal meaning of the phrase defining "labor dispute" in the Norris-LaGuardia Act, "regardless of whether or not disputants stand in the proximate relation of employer and employee" or the judicial doctrine of this Court and others that if a union "believes in good faith that the policy pursued" by an employer is "hostile to the interests of organized labor and is likely, if not suppressed to lower the standards of living for workers, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph". (Cardozo, C. J. in *Nann* v. *Raimist*, 255 N. Y. 307; *Ameri-*

can Steel Founderies v. *Tri-City Trades Council, supra,* 209; *Senn* v. *Tile Layers Protective Union, supra.*)

IV.

The petitioners are workers, necessarily organized on a broader base and for a more effective struggle against a discriminatory economic and employment policy.

This case involves not onyl legal questions but complex socio-economic principles which command the critical attention of all who believe that the law is really sovereign when it ripens into social justice. "An avalanche of decisions by tribunals great and small is producing a situation where citation of precedent is tending to count for less, and appeal to an informing principle is tending to count for more."[15]

In the fierce conflict and "free struggle for life"[16] the chief concern of courts should be to equalize those economic weapons at the command of both parties in the struggle and if the law interferes at all with the operation of the "natural" economic forces, its purpose should be to prevent one side from having too great an advantage over the other. "Courts cannot maintain a balance of power in economic conflict in the abstract".[17] Economic and social conditions over which the protagonists have no control, often render difficult the problem of equalizing the weapons used in the contest. Courts should base their decision upon the facts of each case and upon a consideration of the great variety of factors and their influence in the struggle for economic and social justice. All too often, "the victim is offered up to the gods of jurisprudence on the altar of regularity".[18] Comparative study of the size, strength,

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[15] Cardozo, The Growth of the Law, p. 5.
[16] Holmes in *Vegelhan v. Guster* 167 Mass. 92.
[17] Sayre—39 Yale L. J. 682, 696-97.
[18] Cardozo, The Growth of the Law, p. 66.

financial resources, history, purpose, influence, and skill of each contestant is essential. Difference within the economic and social areas should be considered and decisions reached based upon these subtle, yet powerful considerations.

The use of such language as "threats, conspiracy, intimidation", to describe ordinary economic pressure led the lower Court to believe that the respondent was a passive party whose only role was as a target of injurious activity and to look with disfavor upon the cause before it was pleaded. But the respondent discharged some people represented by petitioners, had refused to negotiate with petitioners concerning employment and had refused to recognize petitioners as representing and bargaining for employees and consumers who had a substantial economic interest at stake. And so both parties to the dispute were damaged. More is involved than mere injury to the respondent. Each side was trying to gain advantage in the contest at the expense of the other, if necessary. When the court enjoined the petitioners from peaceful picketing, it did more than prevent temporary damage to respondent; it gave him greater and unfair advantage over the petitioners before the petitioners could utilize the weapons at their disposal.

> "In dealing with these lively issues, sterility and unconscious partisanship readily assume the subtle guise of legal principles." *c. f.* Frankfurter & Greene, The Labor Injunction, p. 46.

It is generally conceded, even by the most casual observers of social-economic problems in this country, that the Negro group, being the marginal class in the economic life of the nation, has been the hardest hit during the period of stress and strain through which we have lately and are still passing. It is equally generally agreed that the present economic plight of the Negro is an integral part of the general social and economic structure of this country.

The Negro and Relief.[19]

In the District of Columbia approximately 75% of the total Negro population is on relief, yet the Negro represents only 27.1% of the total population.

The disproportionately large number of Negroes on relief rolls, the peculiarities inherent in the Negro's socio-economic status, and the prevalence of traditional beliefs in certain sections concerning procedure in the relative treatment of the races are among the factors which have attracted special consideration to the problem of the Negro on relief. While Negroes comprise only one-tenth of the total population of the United States, they have comprised an average of approximately one-sixth of the relief population. (See table B-1.)

Table B-1.—Per Cent of Negroes, Whites, and Other Races of the Total Population and of the Total Relief Population.

	Per cent of total United States population [21]	Per cent of relief population [20]
Negro	9.7	16.7
White	88.7	81.3
Others	1.6	2.0

The extremely disproportionate representation of Negroes on relief may be stated in another way. According to the Unemployment Relief Census of October 1933, Negroes on relief comprised 17.8 per cent of the total Negro population, whereas only 9.5 per cent of all white persons and other races were on relief. (See table B-2.)

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[19] 1930 Census of Population.

[20] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

[21] Smith, Alfred E., Federal Emergency Relief Administration Bulletin, March 31, 1936.

By January 1935, according to estimates based on sample surveys, 25.5 per cent of all Negroes were on relief as compared to 15.5 per cent for all whites and other races. (See table B-3.) This disproportionate representation is more pronounced in the case of urban Negroes. According to the Unemployment Relief Census of October 1933 the percentage of the urban Negro population receiving relief was almost three times that of the urban white population.

TABLE B-2.—Number and Per Cent of Negroes, Whites, and Other Races on Relief, Urban and Rural.

October, 1933.

	Total population [22]	Relief population [23]	Per cent relief of total
Negro:			
Urban	5,193,913	1,387,313	26.7
Rural	6,697,230	730,331	10.9
Total	11,891,143	2,117,644	17.8
White and other races:			
Urban	63,760,910	6,196,852	9.7
Rural	47,122,993	4,371,168	9.3
Total	110,883,903	10,568,020	9.5
All races:			
Urban	68,954,823	7,584,165	11.0
Rural	53,820,223	5,101,499	9.5
Total	122,775,046	12,685,664	10.3

[22] 1930 Census of Population.

[23] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

TABLE B-3.—Number and Per Cent of Negroes, Whites, and Other Races on Relief, Urban and Rural.

January, 1935.

	Total population [24]	Relief population [25]	Per cent relief of total
Negro:			
Urban	5,193,913	2,050,000	39.5
Rural	6,697,230	980,000	14.6
Total	11,891,143	3,030,000	25.5
White and other races:			
Urban	63,760,910	9,320,000	14.6
Rural	47,122,993	7,820,000	16.6
Total	110,883,903	17,140,000	15.5
All races:			
Urban	68,954,823	11,370,000	16.5
Rural	53,820,223	8,800,000	16.4
Total	122,775,046	20,170,000	16.4

[24] 1930 Census of Population.
[25] Unemployment Relief Census, October 1933, Federal Emergency Relief Administration.

The presence of Negroes on relief rolls in disproportionate numbers may be accounted for by a number of fairly well-known factors. The Negro has been forced to seek aid from relief agencies because of all the reasons which affect white persons plus a number which affect the Negro only. In general, the Negro's economic position is so insecure that he has been one of the worst victims of the depression. He has been forced on relief rolls by traditional

factors directed against him because of his race. More specifically, the following factors may be listed as among those responsible for the Negro's presence on relief rolls in numbers so much larger than might have been expected, in view of his percentage of the population:

1. The concentration of Negroes in those economic groups which have contributed heavily to the relief rolls; *i. e.*, unskilled labor and domestic service workers. For instance, 28.6 per cent of all Negroes gainfully employed are engaged in domestic service. A preponderant number of the 18.6 per cent engaged in manufacturing and mechanical industries are unskilled laborers.

2. Lower wage scales for Negroes than whites. Wages paid to Negro gainful workers are in most instances smaller than those paid to white workers doing identical work. The differential wage is less widespread in the North than in the South, although it exists in all sections.

3. Racial discrimination in lay-offs and reemployment. The Negro worker is traditionally the first to be discharged and the last to be rehired.

4. The displacement of Negro labor. The Negro gainful worker is being displaced by white workers and workers of other races. He is being crowded out of traditionally "Negro jobs," and occupational shifts brought about by the depression are crowding him out of the cheap labor field.

5. Industrial color bans. There have always been industries which have refused to employ Negro workers.

6. Color bans among organized labor. The Negro is frequently denied membership in labor unions. This discrimination has severely restricted his opportunities for employment, particularly under that part of the recovery program which gives preference to organized labor.

7. Small scale Negro business enterprises. Negro business enterprises are small in scale and number, confined to a narrow field, and handicapped by all the factors that diminish economic opportunity for the Negro.

8. The dislocation of the tenant system in southern agriculture. The impact of the depression on the "furnishing" system left many Negro tenants, sharecroppers, and laborers without even the bare necessities of living.

9. Lack of provision for Negro unemployables. The inadequacy of local public welfare facilities for Negroes is much more pronounced than for whites. Many communities with large Negro populations are almost, if not entirely, lacking in provisions for Negro unemployables. There is also a higher proportionate number of unemployables among Negroes because of such factors as inadequate income with the consequent ill health, high death rate, broken families, etc. According to the Unemployment Relief Census of October 1933, 20.5 per cent of all Negroes on relief in certain States with large Negro populations were 65 years of age or over as compared to only 6.3 per cent for whites in those States.

10. The relative instability of Negro family life. Broken families are a consequence of poor living conditions, migration, and kindred factors. Illegitimacy, illiteracy, and the lack of a sense of responsibility all have their roots in the Negro's unfortunate past, but are fostered by the conditions under which most Negroes are forced to live today.

Several of the above factors probably explain why Negroes on relief are not being reabsorbed into private industry at the same rate as whites. A special study of relief rolls in six selected cities revealed that while Negroes were added to the relief rolls in a proportion twice as great as whites through loss of private employment, they were re-

moved from the rolls through reemployment only half as frequently.[26]

In some rural areas Negro families were expected to live on considerably less than white families, as indicated by relief budgets. A study of certain rural counties in problem areas of the South, made by the Federal Emergency Relief Administration, revealed an average monthly relief budget of $8.31 for Negro families and $12.65 for white families.[27] A later study of rural Negroes on relief pointed out discrepancies between Negroes and whites both in direct and work relief benefits, but cited differences in the sizes of Negro and white households and differences in the occupational status and experience of employable members as some justification for such discrepancies.

The Negro white-collar worker is said to have suffered more proportionately from discriminatory practices than any other group. The existence of this group was frequently ignored and its members became "laborers" or remained ineligible for relief.

Negroes as a group are definitely anxious to support themselves without public aid, as disclosed by formal and informal investigations of the morale of relief persons. In Tift County, Georgia, for instance, the judgment of the local administrator was that, although the large Negro farm population had been subject to some "dumping" on the relief rolls by landlords during noncrop seasons and had become habituated through a lifetime of sharecropping and tenant farming to receiving aid in times of stress, Negroes were to the extent of 95 per cent of their number anxious to secure work and to become selfsupporting. All investigations which have been made indicate that there is no reason

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[26] Federal Emergency Relief Administration Research Bulletin, B-41.

[27] Computed from data contained in Federal Emergency Relief Administration Research Bulletins, E-3, p. 7, 10, 11, 13, 15, 17, 21, 24, 27, 28, 29, 31.

to believe the Negro will become chronically dependent on relief unless he is denied reasonable economic opportunity.

It has become axiomatic that the Negro is the first to be fired and the last to be hired. Denied employment opportunities in many avenues open alike to other citizens and non-citizens, as a matter of selfpreservation, the Negro has been forced to adopt a technique to obtain from those concerns which live by Negro patronage recognition in employment, to which, under all the circumstances, he is justly entitled. He has a right to attempt to win economic stability by peaceful, lawful means.

Since the Negro does not sit on the boards of directors of corporations, whose enterprises, conducted in Negro communities, help to swell the profits of those corporations, the Negro has been compelled to inaugurate campaigns such as the one complained of in this suit, to *persuade* the management by negotiations and/or peaceful picketing to give recognition in employment in those concerns which depend for their existence on Negro patronage. To deny the Negro this right is to take from him his only defense against a discriminatory policy which jeopardizes his economic security and dooms him forever to accept the crumbs from the table which his patronage has prepared.

Just as it is the concern of the community in general to see to it that the health standards of all groups are raised to, and maintained at, a level of safety, so it is the concern of the community that all groups have at least a semblance of economic security. The wealthy inhabitants of Sixteenth Street and Chevy Chase should be as interested in the health standards of poor unfortunate Negroes living in Bland Court and York Alley as in the health standards of their own immediate communities. This is evident when we realize that the persons who handle their foods before it

reaches their homes, the cooks who prepare their meals, the nurses who care for their babies, and those who are the caretakers of public and private buildings may come from a diseased-infected court, alley, or community. *In like manner, if Negroes are denied employment, they become a public charge, swell relief rolls, increase the prison population, and even endanger the personal safety of all citizens, the costs in all instances being borne from the purses of citizens apparently far removed from it all. To deny the Negro the right to work for an honest living is tantamount to denying him the right to live.*

In recent years there has been a steady drive to increase and to better conditions of employment. There has been developing what is referred to as a larger pattern of social justice. During this time peaceful picketing and the boycott have been universally used to improve conditions of employment. These devices have been used also to force employers to recognize particular unions and their right to organize within the ranks of employees even before the relationship of employer and employee had actually been established. Or, expressed in other language, unions composed of non-employees have used the device of picketing industrial establishments to force the management in said establishments into unions. Also, unions, frequently picket establishments which refuse to give employment to persons who are affiliated with unions. *There appears to be no difference between these situations and the dispute involved in this case other than in this case those seeking to arrange conditions of employment happened to be identified as members of the Negro race. In the equation of justice there is no element of race.*

THE OCCUPATIONAL AND EMPLOYMENT STATUS OF THE NEGRO.

But the Negro is denied economic opportunities. He is denied it in the Federal service. Senator Borah summed

up the discriminatory employment policy of the Federal Government when on January 7, 1938, in the United States Senate, he said, "Take for instance, the colored girl, who, under great handicaps, has earned the right to be employed by her Government upon an equality with everyone else. She goes with a certificate of competency from the Civil Service Commission, one of the great Departments here in Washington, under the ægis of the Federal Government, and when she enters the door and her color is discovered, she is told that the place is filled, which is probably false. This happens not once, but many times. She suffers injustice at the hands of her Federal Government."[28]

The same injustice and discriminatory employment policy is found in the local District Government, as for example: There are 1,340 white police officers in the District of Columbia, earning a yearly salary of $3,192,991; there are only 39 colored police officers, earning $103,280. Yet the Negro represents 27.1 per cent of the total population of the District of Columbia, and based on his ratio to the total population he is entitled to 373 police officers, who would earn $893,289. He has only 2.8 per cent of the number of police officers while the whites have 97.2 per cent of police officers.

In the Fire Department of the District of Columbia there are 871 white firemen and 17 colored firemen, when there should be 240 colored firemen based on percentage of population. These 871 white firemen earn $2,149,640; the 17 colored firemen earn $40,760, thus again the Negro while representing 27.1 per cent of the total population, has only 1.9 per cent employment in the Fire Department; while the white have 98.1.[29]

Of all Negro workers in the United States, 36.1 are in

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[28] Congressional Record, January 7, 1938, Vol. 83, p. 190.

[29] Bulletin Interracial Committee, District of Columbia, "No Negro Need Apply". Harlan E. Glazier and Charles Edward Russell.

agriculture, most of them southern farm laborers or tenants or share-croppers. In the ten chief cotton States, three million Negroes are dependent upon tenant farms. Among 2,000 such families in four States, the small number who received any cash money at all at the end of the year, averaged about $105, for the year 1934. When distributed among the average family of five, this represents a total monthly income per person of $1.75. Between 1920 and 1930, Negroes lost almost three million acres of land they once owned, an area equal to twice the size of the State of Delaware. Of all Negro workers, another 26.6% are in domestic service, generally working long hours for little pay. Negro skilled and semi-skilled workers, comprising another 18% are at the mercy of the trade unions, often barred from membership and forced to "scab" in order to work.

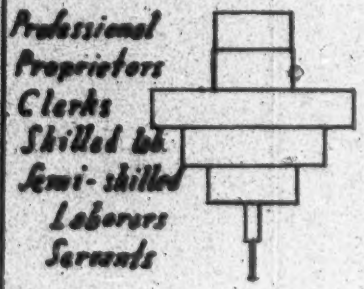
The resultant high percentage of unemployment and irregular work at low wages results in intense economic insecurity, the natural corrollaries of which are: too much labor by Negro women and children, poor homes and broken families, ill health, questionable recreation, delinquency and crime. The Great Depression of 1929 and subsequent years served to make this bad position even worse. While the Negro comprises less than one-tenth of the total population he has made up approximately one-sixth of the relief population. According to the Unemployment Relief Census of October, 1933, Negroes on relief comprised 17.8% of the total Negro population, whereas only 9.5% of all white persons and other races were on relief. All signs now indicate that, while he was "laid off" at twice the rate of other groups, the Negro is being reemployed at only one-half the rate.

"Table A-1"

GAINFUL WORKERS IN D.C., CLASSIFIED BY RACE, SEX AND SOCIAL-ECONOMIC GROUPS: 1930

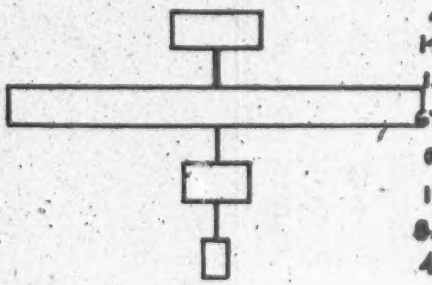
NATIVE WHITE

Male



	%
Professional	12.5
Proprietors	12.6
Clerks	32.2
Skilled lab.	23.5
Semi-skilled	14.5
Laborers	3.4
Servants	1.3

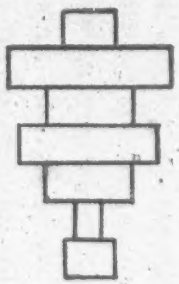
Female



	%
	14.8
	1.8
	57.1
	0.6
	11.4
	8.2
	4.0

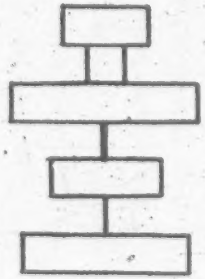
FOREIGN-BORN WHITE

Male



	%
	8.7
	25.9
	15.2
	22.7
	19.6
	4.2
	3.8

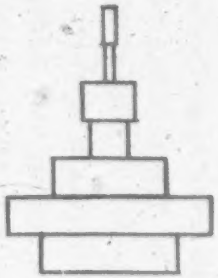
Female



	%
	14.1
	6.2
	31.9
	2.3
	18.8
	0.7
	27.0

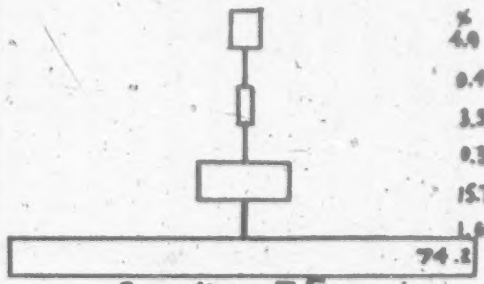
NEGRO

Male



	%
	3.8
	2.6
	2.8
	2.4
	18.0
	36.5
	33.1

Female



	%
	4.0
	0.4
	3.5
	0.3
	15.7
	1.9
	74.2

Franklin E. Frazier

Occupational Census of the Negro in the District of Columbia.

The diagram on the insert page (see table A-1)[30] shows the percentage of males and females in the working population of the native white, the foreign-born white, and the Negro group employed in the seven designated social-economic groups. The diagram shows in a very vivid manner the difference between the distribution for the three racial groups. For example, there are very few native whites employed as laborers and servants. The same is true of the foreign-born whites to a less extent. However, females among foreign-born whites have a comparatively large number in the servant class. In the Negro group, the majority of the workers are laborers and servants. In fact, for the females, practically three-fourths of them are servants. Employment policies undoubtedly help to keep the masses of Negro workers in the lower occupational groups.

Unemployment is rooted in the complexity, irregularity, and interdependence of our economic enterprise. The increasing burden of unemployment is due to the periodic disruption of the sensitive and intricate structure of modern economic life. When our economic and industrial structure moved slowly and simply, production supplied the few and measurable needs of the group directly, but in the terrifically prolific economy of today producers and consumers are strangers and productive enterprise is concerned with profits more than with the imperative and regular needs of the consumer and worker. This fact, coupled with the technological, geographic, and cyclical changes affecting the business structure and constantly upsetting the stability of our economy, compound in their periodic and devastating impact on producers, consumers and workers, particularly

[30] Franklin E. Frazier, Department of Sociology, Howard University.

the marginal, unorganized worker like the Negro who pays heaviest in poverty, squalor, suffering, discrimination, and injustice for what is called economic progress.

Careful estimates and analyses of competent statisticians, the results of whose studies (*supra*) are a part of this brief, reveal that approximately 80 per cent of all Negroes are employed as agricultural workers, domestics, and unskilled workers. These classes of workers are not included in social security or unemployment compensation benefits.

With the recurring maladjustments and tensions which characterize our business structure and the consequent hazards of instability and insecurity, with the exclusion from the benefits of State and Federal legislation and with the discrimination against the Negro by Local and Federal Governments and by the capitalists and corporations who control enterprises situated in Negro communities and supported by Negoes, how can the Negro survive the "dog eat dog" economic philosophy of our commercial and industrial economy? How can the Negro live but by the proper organization and the most effective utilization of his limited purchasing power?

Conclusion.

The decree below should be reversed.

Respectfully submitted,

BELFORD V. LAWSON, JR.,
THURMAN L. DODSON,
EDWARD P. LOVETT,
On Behalf of Petitioners.

THEODORE M. BERRY,
THURGOOD P. MARSHAL,
JAMES M. NABRIT, JR.,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioners,

v.

SANITARY GROCERY COMPANY, INC., A CORPORATION,
Respondent

BRIEF FOR RESPONDENT SANITARY GROCERY COMPANY, INC., OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

A. COULTER WELLS,
WILLIAM E. CARNY, JR.,
Counsel for Respondent.

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SUBJECT INDEX

TABLE OF CASES CITED

STATUTE CITED

In The

Supreme Court of the United States

October Term, 1937

No. 511

The New Negro Alliance, a Corporation, et al.,
Petitioners,

v.

Sanitary Grocery Company, Inc., a Corporation,
Respondent

BRIEF FOR RESPONDENT SANITARY GROCERY COMPANY, INC., OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Statement of Case

The Petitioners seek a review of a decision of the United States Court of Appeals for the District of Columbia affirming a final order and decree of the District Court of the United States for the District of Columbia (then the Supreme Court of the District of Columbia) permanently enjoining the New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the Respondent, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer in the trial court.

Respondent, Sanitary Grocery Company, Inc., is a corporation operating a large number of retail grocery stores in the District of Columbia. The Petitioner, New Negro Alliance, is a corporation composed of colored persons, its purpose, as stated in its Certificate of Incorporation filed with the Recorder of Deeds of the District of Columbia, on, to wit, November 18, 1933, being for *the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises* (Record, pp. 3, 15). The other Petitioners are the Administrator and Deputy Administrator of the Petitioner Corporation.

The sole question involved in Petitioners' application for a review of the unanimous decision of the United States Court of Appeals for the District of Columbia (Mr. Justice Stephens dissenting in part, but concurring in the result) is whether Petitioners, *who admit that the relation of employer and employee does not exist between them and the Respondent and that they are not engaged in any competitive business with the Respondent* (Record, p. 17), have the right to picket and boycott the stores of the Respondent for the purpose of compelling Respondent to engage and employ colored persons in managerial and sales positions. *It is admitted that they did so picket and boycott* (Record, p. 16).

The Respondent employs a large number of colored persons (Record, p. 2), and enjoys harmonious relations with them. None of such colored employees of the Respondent are connected with the Petitioner Corporation or its activities, and no dispute of any kind exists between the Respondent and such employees. The statement of the Petitioners that they acted as agents for discharged employees of the Respondent is an injection placed herein by counsel for Petitioners and is absolutely unsupported by the record.

The Questions of Law submitted herein by the Petitioners are substantially those fully considered in the Courts below, except for the allegation in Question of Law number three (Petition, p. 5), wherein counsel for Petitioners contend that this is a "labor dispute where the Respondents have

discontinued the services of persons represented by the Petitioners," which allegation is mere fiction assumed as fact by Petitioners' counsel and not substantiated by the record. Consequently, that question not being before this Honorable Court, argument herein will be confined to matters included in the record.

I

Petitioners, Having Admitted the Act of Picketing the Stores of the Respondent, Were Properly Enjoined by the Trial Court

The Petitioners, who conducted the picket and boycott of Respondent's store, were not employees or representatives of employees or discharged employees, and, while their motives may have been good, their actions could but cause racial strife, with resultant violence, as "Violence in racial disputes is, as a matter of common knowledge, highly probable" (Record, p. 35; separate opinion of Mr. Justice Stephens of the United States Court of Appeals for the District of Columbia, dissenting in part, but concurring in the affirmance of the injunction granted herein by the trial court).

The record shows that "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business;" (Record, p. 4).

> "There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching" (Jonas Glass Co. v. Glass Bottle Blowers' Asso., 72 N. J. Eq. 653).

And in the case of Pierce v. Stablemen's Union, 165 Cal. 70, it was said at page 79:

> "A picket, in its very nature, tends to accomplish, and is designed to accomplish, these very things. It tends and is designed by physical intimidation to deter other men from seeking employment in the places vacated by strikers. It tends and is designed to drive business away from the boycotted place, not by legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear. Crowds naturally collect, disturbances of the peace are always imminent and of frequent occurrence. Many peaceful citizens, men and women, are always deterred by physical trepidation from entering places of business so under a boycott patrol. It is idle to split hairs upon so plain a proposition, and to say that the picket may consist of nothing more than a single individual peacefully endeavoring by persuasion to prevent customers from entering the boycotted place. The plain facts are always at variance with such refinements of reason."

Petitioners have cited in their brief the case of American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184. It will be noted that said case, decided by Mr. Chief Justice Taft, involved a *labor dispute* in which Plaintiff operated "an open shop, did not recognize organized labor and would not deal with the committee," and yet, even in that case, so involving a labor dispute, the Chief Justice said "the name 'picket' indicated a militant purpose inconsistent with peaceable persuasion."

It will be further noted that the observer permitted in the American Steel Foundries case was for the purpose of inducing employees to leave their employment, while in the cause at bar *the picket is directed solely at the ruination of Respondent's business.*

In a well reasoned opinion in Elkind and Sons, Inc., et al., v. Retail Clerks International Protective Association et al., 169 Atl. 494, a New Jersey Chancery decision, decided December 6, 1933, the Court said in part:

> "The defendants sought to hide their real purpose behind the pretense that they were seeking to advance the interests of the employees; but this was a service unsought and unasked for by them. It may have been acquiesced in by some, but it was forced upon most of them. The strike agitators were mere volunteers. They sought mainly to advance their own personal interests by demonstrating to their superiors their usefulness in inciting strikes, and their ability to enforce their demands. They assumed the role of those aptly characterized by Vice-Chancellor Fallon in Bayonne Textile Corp. v. American Federation of Silk Workers et al., 114 N. J. Eq. 307, 168 Atl. 799, 803, as 'intermeddlers' * * *"

The same opinion quotes from the case of Truax v. Corrigan, 257 U. S. 312:

> "We held that under these clauses picketing was unlawful and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms."

The opinion in the Elkind case further states:

> "Picketing is a militant word and the act of picketing is militant in both character and purpose. Its purpose, compulsion or coercion, is accomplished only by intimidation. * * *"
>
> "Picketing in its mildest form is said to be a nuisance. And a private nuisance, regardless of its intimidating character or effect, will be enjoined," citing Jonas Glass Co. v. Glass Bottle Blowers' Asso., *supra.*

The question of picketing was very fully discussed in the case of Beck v. Teamsters' Protective Union, 118 Michigan 520, in which the Court said in part:

> "To picket complainant's premises in order to intercept their teamsters or persons going there to trade is unlawful. It itself is an act of intimidation, and an unwarrantable interference with the right of free trade. The highways and public streets must be free for all

> for the purpose of trade, commerce, and labor. The law protects the buyer, the seller, the merchant, the manufacturer, and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done 10 or 1000 feet away.
>
> "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They intended to intimidate and coerce. * * *"

The proposition is well established that a combination looking towards the domination or ruination of the business of another by fraud, violence or coercion is fundamentally unlawful.

> Waitresses Union, Local No. 249, et al., v. Benish Restaurant Company, Inc., 6 F. (2d) 568.
>
> Kinloch Telephone Company v. Local Union No. 2, 275 Fed. 241.
>
> Quinlivan, et al., v. Dail-Overland Company, et al., 274 Fed. 56.

Petitioners have cited the case of American Federation of Labor v. Buck's Stove and Range Co., 33 App. D. C. 83, and in their very language support the position taken by the Respondent, that injunction lies against interference with business in cases in which there is violence or the *coercion or intimidation of customers.*

Petitioners also cite the case of Julie Baking Co. v. Graymond, 274 N. Y. Sup. 250 (Brief of Petitioners, p. 16). This case was overruled by the same Court, in the same volume of reports and at a later date, when it decided a case identical to the one at bar, namely Beck-Hazard Shoe Corp. v. Johnson, 274 N. Y. Sup. 946, in which an organization of negroes picketed stores of the Beck-Hazard Corporation, bearing signs reading "An Appeal. Why spend your money where you can't work? This is foolish. Stay Out. Citizens League for Fair Play," which signs were similar to the signs carried by the pickets herein, and in that case an

injunction was granted, the Court in its opinion, saying in part:

> "The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business."

The case of King et al. v. Weiss Company, 266 Fed. 257, is further authority to sustain the decision below. In the King case *white* workers in a plant struck and acts of intimidation which prevented *colored* employees from working were restrained, although such acts would not necessarily have prevented white workers from continuing in employment; the case being one of intimidation, and the timid being entitled to protection against unlawful threats and intimidation, even though the acts would not be sufficient to affect bolder persons.

II

The Court Below Did Not Err in Granting the Injunction Against Picketing and Boycotting

Petitioners rely only on cases involving labor disputes. *No such dispute exists herein* and every instance in which cases have arisen because of picketing by a racial group or organization, it has been held that *such cases did not involve labor disputes and the picketing was enjoined.*

The decree herein granting a permanent injunction (Record, pp. 21, 22) contains no language which requires any of the Petitioners to do business with the Respondent, but only *prohibits them from unlawfully interfering with Respondent's business.*

The Record (pp. 4, 5, 6, 7, 8) discloses numerous averments as to articles appearing in the Washington Tribune (a negro newspaper) relating to threats against the Respondent made in open public meetings held by the Petitioners herein, showing an intention to picket not only one but several of the Respondent's stores, without finding in the Petitioners' answer (Record, pp. 12, 15, 16, 17) any denial of the truth of the facts therein set out, the Petitioners making only the bare statement that "None of the Defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article or news item whatsoever or in any way acted in concert with the Washington Tribune in said publications" (Record, p 16). The answer of the Petitioners further specifically admits that "the defendant corporation has heretofore and prior to the acts herein complained of, picketed or expressed the intention of picketing two other stores of the plaintiff" (Record, p. 16).

It was and is contended that judicial notice should be taken of the fact that the intersection of Eleventh and U Street, Northwest, where the picketing occurred, is one of the main traffic intersections of the City of Washington, and at many times during the day is very congested and that therefore any picketing of the nature complained of herein may at any time result in violence and disturbance of the peace. It has been affirmatively alleged that interference and intimidation have actually taken place (Record, p. 4).

III

The Court Below Properly Held That the Matter in Controversy Herein Was Not Comprehended by the Labor Disputes Act of March 23, 1932

The relationship of employer and employee must exist, or a dispute must grow out of that relationship before the Labor Disputes Act of March 23, 1932, 47 Stat. 70, has

application, and further, in every decided case similar to the one at bar it has been held that picketing by a racial organization to force on employers the hiring of members of that race, does not involve a labor dispute.

In United Electric Coal Companies v. Rice et al., 80 Fed. (2d) 1, certiorari denied 297 U. S. 714, the Court in determining whether or not the Labor Disputes Act of March 23, 1932, prohibited the issuance of an injunction where the dispute was between two rival labor unions, used the following language in holding that the relationship of employer and employee must exist before the act is applicable:

> "Appellant is the innocent bystander, a victim of this unabated conflict. Appellant has no dispute with its employees. The wage scales in force apparently were satisfactory to employer and employee alike. The working conditions brought no discontent. The employees were desirous of working for appellant. With them the appellant wish to operate its mine. This has been prevented by the struggle between the two unions over who should represent the employees." • • • "Do the facts present a case 'growing out of a labor dispute' or which is 'involved in a labor dispute,' as those two phrases are used in the Act?
>
> "Looking to the purpose, as well as to the words, of the Act, we are satisfied that the term 'labor dispute' should be most broadly and liberally construed. The term 'labor disputes' comprehends disputes growing out of labor relations. It infers employment—implies the existence of the relation of employer and employee. Disputes between these parties are the general subject matter of this legislation. All such disputes seem to be clearly included.
>
> "Equally clear we think must be the conclusion that the dispute referred to in the statute must be one between the employer and the employee or growing directly out of their relationship. It does not apply to disputes between employees or to disputes between employee unions to which the employer is not a party. The employer is not precluded from invoking the jurisdiction of a Federal Court of equity unless it appears

that it was in some way a party to the dispute, between two unions."

There have been but two decisions of Appellate Courts on the identical issue involved in the petition herein, and in both such cases, decisions adverse to the contentions of the Petitioners herein were handed down. The first decided case on the question was that of Green v. Samuelson, 178 Atl. 109, decided April 2, 1935. This case involved the picketing of stores in a colored section of Baltimore, Md., by an organization of negroes, similar to the Petitioner Corporation herein, and the Court of Appeals of Maryland, in deciding the case, said in part.

> "So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the circuit court for Baltimore City a similar bill was filed in New York, Beck Shoe Corporation v. Johnson, 153 Misc. 363, 274 N. Y. S. 946, and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction. They have already excited some attention as will appear from 83 Pa. Law Rev. 381, and 48 Harvard Law Rev. 691."

In the Green case there was "no evidence of physical violence and/or disturbance of the peace," and the answer filed in that case set out:

> "And denying that they 'Coerced, intimidated or forced' storekeepers in the immediate neighborhood of the plaintiffs to 'discharge white employees and to hire in their stead negro employees.'"

which is substantially the same answer made by the Petitioners herein (Record, p. 15). The Maryland Court, however, held:

"The defendants contend that this case is, or is akin to, a labor dispute, because their purpose is to secure employment for members of their race and thus improve its condition and that it has such a justifiable cause as to warrant their actions in enforcing their demands by the methods commonly called 'picketing.' International Pocketbook Workers v. Orlove, 158 Md. 496, 148 A. 826. They disclaim any intention or purpose of depriving the plaintiffs' employees of their positions or livelihood, yet, if successful, their activities could have no other result. It is not denied that there is no quarrel or dispute between employers and employees and none between the defendants and those employees. Their grievance is that the defendant merchants depend almost wholly on colored patronage for their existence and that these merchants do nothing for them in return. That there is some merit in their complaint cannot be disputed, as the planting of a white store in an exclusively colored community is an exploitation of the inhabitants for profit, but the defendants cannot right their wrongs by means that are unlawful. The defendants and others of their race have a perfect right to buy where they please. Nor is there anything 'unlawful in the action of a combination who by concerted action cease to patronize a person against whom a concert of action is directed when they consider it is to their interest to do so.' 12 C. J.; Code, Art. 27, 43. * * *

"(3) The defendants do not contend that this is a labor dispute as commonly recognized, but, to justify their actions in instituting a boycott carried on by picketing, they invoke the rules applied to such disputes. There is no question here involved of hours, wages, working conditions, or the right to organize. Whatever of organization there is is made up of colored men and women of various professions, occupations, and callings, to promote the interests of the colored race generally by obtaining employment for its people. The general purpose of colored persons to improve their race may not be improper, but they must adopt lawful means to accomplish this end, and must not resort to intimidation and threats which may easily lead to breach of the peace and physical violence. As

said in My Maryland Lodge v. Adt, 100 Md. 238, 249, 59 A. 721, 723, 68 L. R. A. 752: 'They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with not attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy. But the law does not permit either employer or employee to use force, violence, threats of force or threats of violence, intimidation, or coercion.'

"They may, by organization, public meetings, propaganda, and by personal solicitation, persuade white employers to engage colored employees and to induce their people to confine their trade to those who accede to their wishes, and whether they succeed or fail will depend on the co-operation of their people.

"(4, 5) The complaint here is not with the thing intended to be done, but with the means employed to do it. The case immediately before us is the effort of a race to improve its condition in a section of a large city inhabited almost exclusively by one race, and no way has been pointed out to us, and we know of none, whereby the courts can make a rule to apply to the conditions there existing which would not be applicable where the same racial conditions do not exist. If we say what was being done in the seventeen hundred block on Pennsylvania Avenue in Baltimore was proper, then it can be done in any other block in the city; there cannot be one law for Pennsylvania Avenue and another for streets where the white races predominate and trade, and the courts, in laying down a rule of conduct, must not only consider what has been done but what may be done in consequence of it.

"*In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined* • • •" (italics ours).

And in the case of Beck-Hazard Shoe Corp. v. Johnson, *supra*, the Court further said:

> *"The controversy here is not a labor dispute. The Defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry."*
>
> *"The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.*
>
> *"It is solely a racial dispute* (italics ours). It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive concern is that a certain number of white persons be discharge in order to make place for members of their own race.
>
> "The papers on this motion indicated that there is no unanimity of opinion among the negro leaders themselves as to the wisdom of this course of conduct. Editorial comment from a popular and prominent newspaper published in this community by negroes and read by negroes principally has been submitted to the Court, indicating opposition to the activities of the defendants. The Citizens League for Fair Play is apparently now also out of sympathy with them.
>
> "The Court must take into consideration the ends to be accomplished and the means here adopted by these defendants. *Assuming that the means were peaceful and were devoid of misrepresentation, disorder, or violence, the Court is still of the opinion that the purpose sought does not justify the means used, and that injunctive relief is warranted"* (italics ours).

The attention of this Honorable Court is respectfully invited to the following excerpt from the opinion of the Court of Appeals in determining this case (Record, p. 32):

> "However commendable the purposes of the appellants may be in attempting to improve the condition

of their race, they are not, in carrying out such purposes, justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott. To sustain such action on the part of an organization established merely to advance the social standing of its race would be in complete disregard of fundamental principles of public policy, and cannot be supported upon any principle of law, equity of justice."

Conclusion

Counsel for Respondent respectfully submit that, as the Petitioner Corporation does not constitute a labor union or a labor organization of any kind, and there is no question here involved regarding wages, hours of labor, unionization, or betterment of working conditions, there is no labor dispute involved herein; that the courts below properly enjoined the Petitioners, who were all actively engaged in the matters complained of, from picketing and boycotting the stores of the Respondent; and that the petition for a writ of certiorari should be denied.

Respectfully submitted,

A. Coulter Wells,
William E. Carey, Jr.,
Counsel for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. 511

THE NEW NEGRO ALLIANCE, A CORPORATION, ET AL.,
Petitioners,

v.

SANITARY GROCERY COMPANY, INC., A CORPORATION,
Respondent

BRIEF FOR RESPONDENT

A. COULTER WELLS,
WILLIAM E. CAREY, JR.,
Counsel for Respondent.

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INDEX

CASES CITED

STATUTE CITED

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No. 511

The New Negro Alliance, a Corporation, et al.,
Petitioners,

v.

Sanitary Grocery Company, Inc., a Corporation,
Respondent

BRIEF FOR RESPONDENT

STATEMENT OF CASE

This case is before the Court on a Writ of Certiorari to the United States Court of Appeals for the District of Columbia, which, by its judgment entered on July 26, 1937 (Record, page 23), 92 F. (2d) 510, 65 W. L. R. 874, affirmed the issuance of an injunction entered by the District Court of the United States for the District of Columbia restraining the petitioners herein from picketing and boycotting retail grocery stores owned and operated by the respondent.

The Appellate Court in its opinion clearly and concisely stated the question of law and facts involved herein as follows:

"This appeal is from a final order and decree of the District Court of the United States for the District of Columbia,

permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

"The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

"The single question here involved in whether appellants, who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in the sales positions connected with the operation of its business.

"The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats or boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: Picketing in front of the store with signs containing the words 'Do Your Part! Buy Where You Can

Work! No Negroes Employed Here'; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee 'Is Firing Negro Personnel—Organization Plans to Picket Unless Demands Are Met,' and again, 'Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks,' and again, 'Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood'; and again, 'that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to "buy where you can work."'

"The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does not exist and likewise admits that the parties are not engaged in competitive business."

ARGUMENT

The Court Below Properly Held That the Matter in Controversy Herein Was Not Comprehended by the Labor Disputes Act of March 23, 1932

No labor dispute is involved herein. The question in the instant case has been raised in only three reported cases and all have been determined to be *racial disputes* and injunctions granted and sustained.

The petitioner corporation is not a labor union or organization, but in fact was incorporated under the laws of the District of Columbia as a social organization (R., pp. 2, 13).

The first decided case on the question was that of *Green*

v. *Samuelson*, 168 Md. 421, 178 Atl. 109, decided April 2, 1935. This case involved the picketing of stores in a colored section of Baltimore, Md., by an organization of negroes, similar to the petitioner corporation herein, and the Court of Appeals of Maryland, in deciding the case, said in part:

> "So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the circuit court for Baltimore City a similar bill was filed in New York, *Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274 N. Y. S. 946, and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction. They have already excited some attention as will appear from 83 Pa. Law Rev. 381, and 48 Harvard Law Rev. 691."

In the *Green case* there was "no evidence of physical violence and/or disturbance of the peace," and the answer filed in that case set out:

> "And denying that they 'Coerced, intimidated or forced' storekeepers in the immediate neighborhood of the plaintiffs to 'discharge white employees and to hire in their stead negro employees.'"

which is substantially the same answer made by the petitioners herein (Record, p. 14). The Maryland Court, however, held:

> "The defendants contend that this case is, or is akin to, a labor dispute, because their purpose is to secure employment for members of their race and thus improve its condition and that it has such a justifiable cause as to warrant their actions in enforcing their demands by the methods commonly called 'picketing.' *International Pocketbook Workers* v. *Orlove*, 158 Md. 496, 148 A. 826. They disclaim any intention or pur-

post of depriving the plaintiffs' employees of their positions or livelihood, yet, if successful, their activities could have no other result. It is not denied that there is no quarrel or dispute between employers and employees and none between the defendants and those employees. Their grievance is that the defendant merchants depend almost wholly on colored patronage for their existence and that these merchants do nothing for them in return. That there is some merit in their complaint cannot be disputed, as the planting of a white store in an exclusively colored community is an exploitation of the inhabitants for profit, but the defendants cannot right their wrongs by means that are unlawful. The defendants and others of their race have a perfect right to buy where they please. Nor is there anything 'unlawful in the action of a combination who by concerted action cease to patronize a person against whom a concert of action is directed when they consider it is to their interest to do so.' 12 C. J.; Code, Art. 27, 43. * * *

"(3) The defendants do not contend that this is a labor dispute as commonly recognized, but, to justify their actions in instituting a boycott carried on by picketing, they invoke the rules applied to such disputes. There is no question here involved of hours, wages, working conditions, or the right to organize. Whatever of organization there is is made up of colored men and women of various professions, occupations, and callings, to promote the interests of the colored race generally by obtaining employment for its people. The general purpose of colored persons to improve their race may not be improper, but they must adopt lawful means to accomplish this end, and must not resort to intimidation and threats which may easily lead to breach of the peace and physical violence. As said in *My Maryland Lodge* v. *Adt*, 100 Md. 238, 249, 59 A. 721, 723, 68 L. R. A. 752: 'They have an unquestionable right to present their cause to the public in newspapers or circulars in a peaceable way, but with no attempt at coercion. If ruin to the employer results from their peaceable assertion of these rights, it is a damage without remedy. But the law does not permit either employer or employee to use force, violence,

threats of force or threats of violence, intimidation, or coercion.'

"They may, by organization, public meetings, propaganda, and by personal solicitation, persuade white employers to engage colored employees and to induce their people to confine their trade to those who accede to their wishes, and whether they succeed or fail will depend on the co-operation of their people.

"(4, 5) The complaint here is not with the thing intended to be done, but with the means employed to do it. The case immediately before us is the effort of a race to improve its condition in a section of a large city inhabited almost exclusively by one race, and no way has been pointed out to us, and we know of none, whereby the courts can make a rule to apply to the conditions there existing which would not be applicable where the same racial conditions do not exist. If we say what was being done in the seventeen hundred block on Pennsylvania Avenue in Baltimore was proper, then it can be done in any other block in the city; there cannot be one law for Pennsylvania Avenue and another for streets where the white races predominate and trade, and the courts, in laying down a rule of conduct, must not only consider what has been done but what may be done in consequence of it.

"*In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined* • • • •" (Italics ours.)

The second reported case is that of *Beck-Hazard Shoe Corp.* v. *Johnson*, 274 N. Y. Supp 946, 153 Misc. 363, decided October 31, 1934, in which the Court said in part:

"This is an application for an injunction pendente lite to prevent picketing. The case is one of novel impression in this state. So far as research on the part of counsel and the Court has disclosed, the matter has never before been passed upon in the United States or England except in the circuit court of Baltimore City. *Samuelson* v. *Green* (not reported; opinion appearing in full in the Daily Record, Baltimore, May 26, 1934).

"In a section of New York City, known as Harlem, there is a large community of negroes. One of the main business thoroughfares of this community is 125th Street. The plaintiff corporation conducts a retail business in a store at 264 West 125th Street. The defendant Citizens' League for Fair Play is an unincorporated association composed of negroes in this community.

"(1) Prior to September 10, 1934, the Citizens' League for Fair Play appointed certain individuals as its so-called picket committee. Apparently the purpose of the committee was to induce storekeepers doing business within this section to employ a certain percentage of negro help. It is not clear from the affidavits whether any picketing such as that hereinafter described was actually done prior to September 10, 1934. On September 10, 1934, the Citizens' League for Fair Play, at a meeting of the association, decided to discontinue the activities of this committee and to revoke its authority. This was done. * * *"

"* * * On September 21, 1934, the defendants began to picket in front of the plaintiff's store. The banners carried by the pickets contained inscriptions substantially in the following form: 'A. S. Beck does not employ 50 per cent. negroes. Stay out. Do not buy here.' 'An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play.' 'An Appeal. Don't buy from this store. Negro serving here is a porter not a clerk. Stay out. Citizens League for Fair Play.'"

"* * * (6) The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.

"It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a per-

centage of negro help. Their exclusive concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"The papers on this motion indicate that there is no unanimity of opinion among the negro leaders themselves as to the wisdom of this course of conduct. Editorial comment from a popular and prominent newspaper published in this community by negroes and read by negroes principally has been submitted to the Court, indicating opposition to the activities of the defendants. The Citizens' League for Fair Play is apparently now also out of sympathy with them.

"The Court must take into consideration the ends to be accomplished and the means here adopted by these defendants. Assuming that the means were peaceful and were devoid of misrepresentation, disorder, or violence, the Court is still of the opinion that the purpose sought does not justify the means used, and that injunctive relief is warranted. The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business.

"It is not analogous to a situation where one labor union is in conflict with another and carries on picketing to obtain preference for its own members over those of the other union. Such instances are found in cases like *J. H. & S. Theatres* v. *Fay,* 260 N. Y. 315, 183 N. E. 509; *Stillwell Theatre* v. *Kaplan,* 259 N. Y. 405, 182 N. E. 63, 84 A. L. R. 6; *Nann* v. *Raimist,* 255 N. Y. 307, 174 N. E. 690, 73 A. L. R. 669. Justification exists for conflict between rival unions, even though the innocent employer is willing to deal collectively with either or both, in the claim by one union that the policy of its rival is hostile to the interests of organized labor. Cardozo, C. J., in *Nann* v. *Raimist, supra,* laid down this principle as follows (page 314 of 255 N. Y., 174 N. E. 690, 693):

"'The remedy is not lost because the controversy is one between the members of rival unions, and not, as happens oftener, between unions and employers. *Tracey* v. *Osborne*, 226 Mass. 25 (114 N. E. 959); *Goyette* v. *Watson Co.*, 245 Mass. 577 (140 N. E. 285). On the other hand, the legality of the defendant's conduct is not affected by the fact that no strike is in progress in any of the plaintiff's shops. *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin*. 245 N. Y. 260 (157 N. E. 130). If the defendant (union) believes in good faith that the policy pursued by the plaintiff (union) and by the shops united with the plaintiff is hostile to the interests of organized labor, and is likely, if not suppressed, to lower the standards of living for workers in the trade, it has the privilege by the pressure of notoriety and persuasion to bring its own policy to triumph. *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin, supra; Bossert* v. *Dhuy*, 221 N. Y. 342 (117 N. E. 582, Ann. Cas. 1918D, 661).'

"In the present case no claim is made that any interests of organized labor are involved. It is purely a dispute of one race as opposed to another.

"*The acts here shown are also contrary to a sound public policy. If they were permitted and if they succeeded in their purpose, it would then become equally proper for some organization composed of white persons to picket the premises, insisting that all negro employees be discharged and that white employees be re-employed. If they were permitted, there is substantial danger that race riots and race reprisals might result in this and other communities. They would serve as precedent for similar activity in the interest of various racial or religious groups. The effect upon the social well-being of communities throughout the state would be far reaching.*" (Italics ours.)

"There is no precedent to warrant the use of this concerted action to the injury of this plaintiff for the purposes indicated. A balancing of advantages to the defendants as against the disadvantages to this plaintiff and to the social order as a whole, clearly points to disapproval of the acts complained of. *As*

a matter of principle, based upon a sound public policy, the Court cannot lend its assistance to this movement. It must protect not only this plaintiff but the community as a whole, from the dangers which exist in continued activity along these lines." (Italics ours.)

"* * * The motion for preliminary injunction is granted. Settle order."

The petitioners herein have based their right to be heard before this Court on the ground that there has been no proper construction, interpretation and application of the Norris-LaGuardia Disputes Act as to picketing by an association similar to petitioners; consequently the opinion of the trial court in the instant case and the opinion of the United States Court of Appeals of the District of Columbia which analyze the question are set forth in full as completing the judicial history of reported decisions in cases involving picketing by racial organizations.

The opinion in the District Court of the United States for the District of Columbia (Record, p. 16), 64 Wash. Law Rep. 627, held:

"The question presented is one of considerable importance. For a long time we have faced a sort of warfare between groups that operate industry, between those who have the ownership of the business, and those who labor in industry Argument among themselves and struggle and contest among them are still going on. Strikes, boycotts, picketing, lockouts and blacklists have been weapons of this industrial warfare. This situation has resulted in many laws being passed designed to aid peace and order in this most disturbed part of the social life of the country.

"Here it is suggested that it is proper and lawful for this kind of contest to be adopted by other groups not directly interested in any way in the industry or business itself.

"There are three sources of many of the disorders that have existed in the world for centuries. One has been sectionalism. Different parts of a country may

have prejudices against each other; and the same situation may exist between neighboring states."

"Another has been religious prejudice. Countless difficulties have arisen among religious groups.

"Another source of difficulty lies in racial prejudices. Not necessarily different races, but also among groups of different descent, such as Germans and Frenchmen, Jews and Gentiles.

"These prejudices arising out of sectionalism, religion and race have given rise to all kinds of misfortunes and disasters, revolutions and many of the evils that nations have had to deal with.

"Fortunately for us in this country, for a long time we have been able to get along in an orderly way so far as sectional, religious and race prejudices are concerned. We have been able to get along very peaceably and harmoniously.

"As suggested to counsel this morning, let us take one of our neighbors who lives out at Takoma Park, for instance, a Seventh Day Adventist, who runs a shop and business out there, and prefers to employ men of his own denomination. He uses his right to employ whom he pleases. His contract is between him and his employee. Now, suppose the Methodists in the neighborhood form an organization and say, 'We are going to boycott you unless you agree to employ our people in your shop instead of your own. We will close up your business. We will march our pickets up and down before your shop and tell people not to have anything to do with you.'

"We can at once see that that would engender a great storm center in the neighborhood, of prejudice and trouble likely to lead to disturbance and conflict, and therefore it would be of vital concern to the public.

"Let such a scheme be carried out by religious denominations with interference in and coercion through picketing of individual business generally and what a great zone of disturbance and difficulty would be created.

"The same in the case of sectionalism. We do not have much of that left in this country, but we used to have a lot of it; and we might find in this city, for example, many people from the South who could band

together and say, 'We are going to make every business man in this city employ nobody but Southern people. We will picket and boycott every place of every man unless he agrees to hire Southern people.'

"What would be the inevitable result of such combinations of people to coerce others in matters with respect to which they have no right to interfere?

"It is the same with races. Should the white people say to the man who employs colored help in his shop, 'You must put white men in there,' and put pickets out to parade up and down to see that these colored employees are turned out and white people are employed in their place?

"If we reverse that illustration, and suppose that a group of colored men say, 'We are going to picket and to boycott you unless you turn out your white employees or unless you cease hiring them and employ colored people,' that can only tend to lead to the same kind of trouble, the same kind of race disturbances, difficulties and disasters. It seems to me it is clearly along the wrong line—such combinations of people that are trying to interfere by coercion with the business of somebody else.

"Of course nobody can make somebody else deal with him. Everybody has a right to deal where he pleases. He does not have to deal with a man for any reason. He may not like his eyes or his clothes or his name or his race. That is his business.

"But it is a different thing when combinations are formed for the purposes of coercing people as to how they shall operate their business.

"So I think it would be very unfortunate if this zone of trouble should be extended from the economic zone in which we are already having so much trouble, into the sectional or religious or racial zones.

"I do not believe that the laws that relate to labor disputes have any application to this case. I do not think there is any analogy between the zones. They are entirely separate fields; and for that reason I think that not only does the law not apply, but the citations of authorities that have been made with respect to labor controversies have no analogy here. We must all work for better advancement all along the line. That can-

not be achieved through any particular group of this kind trying to impose restraints or to interfere by coercion in the conduct of the business of other citizens.

"I think the injunction ought to be granted in this case, and I will sustain the bill on the authority of the *King case* (266 Fed. 257, 260), and the *Beck case* (42 L. R. A. 407). You can, of course, take the case to the Court of Appeals. It may be well to have that court's view in this case to help us all have a clearer conception of just what the rights and duties of citizens are with respect to matters of this kind."

On appeal to the United States Court of Appeals for the District of Columbia the injunction entered by the trial court was affirmed by the following opinion (*The New Negro Alliance* v. *Sanitary Grocery Co.*, R. p. 23, 92 F. (2d) 510, 65 W. L. R. 874):

"This appeal is from a final order and decree of the District Court of the United States for the District of Columbia, permanently enjoining The New Negro Alliance, a corporation, and two of its officers, William H. Hastie and Harry A. Honesty, from picketing or boycotting retail grocery stores of the appellee, Sanitary Grocery Company, Inc. The case was finally disposed of on bill and answer.

"The appellee is a corporation operating a large number of retail grocery stores in the District of Columbia. Appellant The New Negro Alliance is a corporation composed of colored persons, its objects being the mutual improvement of its members and the promotion of civic, educational, benevolent and charitable enterprises. The individual appellants are the administrator and deputy administrator of The New Negro Alliance.

"The single question here involved is whether appellants, who admit that the relation of employer and employee does not exist between them and the appellee, and that they are not engaged in any competitive business with the appellee, have a legal right to picket and boycott the stores of the appellee for the purpose of compelling it to engage and employ colored persons in

the sales positions connected with the operation of its business.

"The court below entered a decree restraining the appellants from picketing or boycotting or by inducements or threats or intimidation or the use of physical force from preventing or hindering persons who desire or intend to enter the place of business of appellee from entering and transacting business with appellee. The bill charges that the appellants had made arbitrary and summary demands that appellee engage and employ colored persons in managerial and sales positions in its store and had written letters to appellee which contained threats of boycotting and ruination of appellee's business and that upon the refusal of appellee to comply appellants, their members, representatives, etc., had unlawfully conspired to picket, patrol, boycott and ruin appellee's business. Specific acts are alleged as follows: Picketing in front of the store with signs containing the words 'Do Your Part! Buy Where You Can Work! No Negroes Employed Here'; that these pickets had jostled and collided with persons in front of the store and physically hindered, obstructed and interfered with persons desiring to enter appellee's place of business; that the pickets are disorderly while picketing and attract crowds and when crowds are attracted encourage them to prevent persons from entering appellee's place of business; that appellants in concert have induced to be published in Washington Negro newspapers notices to the effect that appellee 'Is Firing Negro Personnel—Organization Plans to Picket Unless Demands Are Met,' and again, 'Sanitary Store Picketed by Alliance for Refusal to Employ Negro Clerks,' and again, 'Housewives Being Canvassed by Group Buy-Where-You-Can-Work Campaign Carried to Residents in Neighborhood'; and again, 'that the Alliance is conducting a house-to-house canvass in the vicinity of the new store and residents in the neighborhood are urged to "buy where you can work."'

"The answer denies the conspiracy charged and likewise denies physical coercion or intimidation, and admits that the relation of employer and employee does

not exist and likewise admits that the parties are not engaged in competitive business.

"Appellants' appeal in this Court is grounded on their claim that peaceful picketing is not illegal.

"The legislatures and the courts have gone far in sustaining peaceful picketing where labor disputes are involved. By the rather sweeping Act of March 23, 1932 (47 Stat. 70, Secs. 101-115, T. 29, U. S. C.), the Congress prohibited the federal courts from restraining peaceful picketing in cases involving 'labor disputes.'

"Sec. 13 of the Act (Sec. 113, T. 29, U. S. C.) defines 'labor disputes,' as comprehended within the terms of the Act, as follows:

> "'(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined.)
>
> "'(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

"'(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.'

"We agree with the trial court that the instant controversy does not involve a labor dispute within the statute. In this view the distinction between pickets attempting by verbal persuasion to interfere with the business of and to prevent dealing with the establishment boycotted, and pickets silently displaying cards bearing inscriptions intended to accomplish the same object, is of little importance, since both constitute an interference not only with the business boycotted but with the public use of the street. Its purpose in either case when induced by concerted action on the part of a great mass of people is so to interfere with the business of appellee as to compel it to surrender its free right to choose its employees and to conduct its business in whatever lawful manner it may elect. These are rights of which it cannot be deprived under the facts and circumstances here disclosed.

"The tendency of the picketing and the action taken to make it effective disclosed in this case is to deter peaceful citizens, both men and women, from entering the appellee's place of business, and to deprive them of their lawful rights. To say under such circumstances that the picket consists of nothing more than a peaceful endeavor to prevent customers from entering the boycotted place is to make a statement at variance with the facts. *Cf. Truax* v. *Corrigan*, 257 U. S. 312.

"With the admission of appellants that there is no relation of employer and employee existing, and that appellants are not engaged in a competitive business with appellee, the case narrows down to whether or not appellants come within sub-paragraph (c) of the above-quoted statute, and in conducting this picketing are attempting to negotiate, fix, maintain, change or

arrange terms or conditions of employment. As we have said, we think that the statute will not admit of so broad a construction. Every person conducting a legitimate business is entitled to select his own employees. When employees are selected and become engaged in the business, then any differences which may arise between the employer and employee, or any organization in which the employee may be a member, may come within the provisions of the statute, but until such relation becomes established no ground exists for what may be called a labor dispute. If appellants are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the appellants, if upheld, might be carried.

"We are clearly of the opinion that this is not a labor dispute. It is a racial dispute in which appellants have admittedly confederated together to impose on appellee definite terms in the employment of its help. In *A. S. Beck Shoe Corporation* v. *Johnson*, 274 N. Y. S. 946, an association of negroes picketed stores of the shoe corporation, bearing signs reading, 'An Appeal. Why spend your money where you can't work? This is foolish. Stay out. Citizens League for Fair Play.' These signs were similar to the placards carried by the pickets in the instant case. The court in that case said:

> " 'The controversy here is not a labor dispute. The defendants do not constitute a labor union or a labor organization of any kind. They do not compose, nor are they all members, of any single trade or class of trades. Their demands are not connected with any one industry. The questions about which they are now picketing have no connection with wages, hours of labor, unionization, or betterment of working conditions.
>
> " 'It is solely a racial dispute. It is born of an understandable desire on the part of some of the negroes in this community that the stores in their neighborhood where they spend their money should employ a percentage of negro help. Their exclusive

concern is that a certain number of white persons be discharged in order to make place for members of their own race.

"'* * * * The acts of the defendants are irreparably injuring the plaintiff's business. Not only do they tend to keep prospective colored customers out of the store of the plaintiff, but they must necessarily have the effect of keeping out prospective white customers also. The purpose of the defendants in having members of one race discharged in order to employ the members of another race will not justify this direct damage to the plaintiff in the conduct of its business.'

"The court in that case was considering a situation identical with that here presented, and the reasoning of the court in its opinion we regard as sound.

"In a case analogous to the instant case, *Green* v. *Samuelson*, 168 Md. 421, there was involved the picketing of stores in a colored section of the City of Baltimore by an organization of negroes similar to the appellant corporation. In that case the Court of Appeals of Maryland, in upholding the issuance of an injunction, said (pp. 425-6, 429):

"'So far as we are able to ascertain, this is the first time the question here presented has arisen in an appellate court, and our information is that the case in the court appealed from is the first time it has been presented to any tribunal. About a month after the bill was filed in the Circuit Court of Baltimore City a similar bill was filed in New York (*Beck Shoe Corporation* v. *Johnson*, 153 Misc. 363, 274 N. Y. S. 946), and both chancellors declined to regard the question as a labor dispute, and, on the ground of public policy, granted the relief prayed by the bills for injunction.

* * * * * * *

"'In our opinion, this is a racial or social question, and as such, the rules heretofore announced and applied to labor disputes have no application, and the things complained of were properly enjoined. * * *'"

"However commendable the purposes of the appellants may be in attempting to improve the condition of their race, they are not, in carrying out such purposes, justified in ignoring the rights of the public and the property rights of the owner of the business which they attempt to boycott. To sustain such action on the part of an organization established merely to advance the social standing of its race would be in complete disregard of fundamental principles of public policy, and cannot be supported upon any principle of law, equity or justice.

"The decree is affirmed."

It will be found from the reading of the following separate opinion of Mr. Justice Stevens, dissenting in part but concurring in the affirmance of the injunction, that the court was unanimous in holding this to be a *racial and not a labor dispute.*

"I dissent from the dictum of the majority that no labor dispute exists within the meaning of the Norris-LaGuardia Act (47 Stat. 70) until differences arise between the employer and the employee or any organization in which the employee may be a member. *Cinderalla Theatre Co.* v. *Sign Writers' Local Union,* 6 F. Supp. 164; *Dean* v. *Mayo,* 8 F. Supp. 73; *cf. Levering & Garrigues Co.* v. *Morrin,* 71 F. (2d) 284, certiorari denied 293 U. S. 595; see Legislation Note, *The Norris-LaGuardia Act; Cases Involving or Growing Out of a Labor Dispute* (1937), 50 Harv. L. Rev. 1295. The dictum would exclude from the operation of the Norris-LaGuardia Act a dispute between two unions as to the right to represent employees, the employer being indifferent as to the result, and would also exclude from the operation of the Act a dispute as to unionization between a union and an employer of exclusively non-union labor. Neither of such types of disputes is involved in the instant case, and we should therefore not even in dictum rule concerning them.

"I dissent from the affirmance of that part of the decree which as worded enjoins the appellants from boycotting the appellee. I think it was erroneous for

the trial court in effect to order the appellants to trade at the appellee's store.

I concur with the majority in the conclusion that in the instant case the Norris-LaGuardia Act does not prevent the issuance of an injunction. The dispute in the instant case is not, I think, a labor dispute within the definition given to that phrase in the Norris-LaGuardia Act—even under the most liberal construction of that Act. *E.g., Cinderella Theater Co.* v. *Sign Writers' Local Union, Dean* v. *Mayo, Levering & Garrigues Co.* v. *Morrin*, all *supra*. See Legislation Note, *supra*, 1301 n. 32. Therefore the trial court had jurisdiction to issue an injunction.

"I feel bound to concur further with the majority in the conclusion that in the instant case the injunction was properly issued. I do so with reluctance for I think courts should be cautious indeed in limiting application of the general proposition so happily stated by Justice Hofstadter, in *Julie Baking Co.* v. *Graymond*, 152 Misc. 846, 274 N. Y. Supp. 250:

> " 'The right of an individual or group of individuals to protest in a peaceable manner against injustice or oppression, actual or merely fancied, is one to be cherished and not to be proscribed in any well-ordered society. It is an essential prerogative of free men living under democratic institutions. And it is salutary for the state, in that it serves as a safety valve in times of stress and strain. * * *' [152 Misc. at 847; 274 N. Y. Supp. at 251-252.]

"But this proposition was uttered in a case which though it did not involve a labor dispute also did not involve a racial dispute. It was a dispute between a neighborhood organization and a bakery concerning alleged extortionate prices.

"How far a right may be exercised, or how far it is proper to limit its exercise, is a question of policy and one which, however delicate, must nevertheless be determined by courts according to their best judgment—in the absence of some controlling statute. The questions of policy involved in picketing in labor disputes have been thought by Congress, in the Norris-

LaGuardia Act, and by many courts, to operate against restraint of peaceful picketing.* Peaceful picketing has been recognized as legal, however, not upon the theory that it is not an invasion of another's right but upon the theory that is is a justifiable invasion. As said by Mr. Justice Holmes in *Aikens* v. *Wisconsin*, 195 U. S. 194, 204:

> "'* * * prima facie, the intentional infliction of temporal damage is a cause of action, which, as a matter of substantive law * * * requires a justification if the defendant is to escape.'

"And, as said the same author in *Privilege, Malice, and Intent* (1894), 8 Harv. L. Rev. 1, 9:

> "'* * * when a responsible defendant seeks to escape from liability for an act which he had notice was likely to cause temporal damage to another, and which has caused such damage in fact, he must show a justification. The most important justification is a claim of privilege. In order to pass upon that claim, it is not enough to consider the nature of the damage, and the effect of the act, and to compare them. Often the precise nature of the act and its circumstances must be examined. It is not enough, for instance, it say that the defendant induced the public, or a part of them, not to deal with the plaintiff. * * * in all such cases the ground of decision is policy; and the advantages to the community, on the one side and the other, are the only matters really entitled to be weighed. * * *'

"The problem of policy has also been well put thus:

> "'The truth to be dealt with is that every measure upon which a labor union relies for acceptance of its

* The Norris-LaGuardia Act denies jurisdiction to enjoin "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." 47 Stat. 71. And see the following decisions: *Senn* v. *Tile Layers' Protective Union*, U. S. Sup. Ct. (May 24, 1937), 4 U. S. L. Week 1211; *Iron Molders' Union* v. *Allis-Chalmers Co.*, 166 Fed. 45; *Exchange Bakery & Restaurant, Inc.*, v. *Rifkin*, 245 N. Y. 260, 157 N. E. 130.

demands, involves the curtailment of some temporal interest of employer, non-union employee, and frequently the public. * * *

* * * * * * * *

" 'The damage inflicted by combative measures of a union—the strike, the boycott, the picket—must win immunity by its purpose. But neither this nor any formula will save courts the painful necessity of deciding whether, in a given conflict, privilege has been overstepped. The broad questions of law—what are permissible purposes and instruments for damage,—and the intricate issues of fact to which they must be applied, together constitute the area of judicial discretion within which diversity of opinion finds ample scope. * * *' [*Frankfurter and Greene: The Labor Injunction* (1930), at 24, 25.]

"One of the main factors of policy which must be weighed in judicial determination of whether an injunction shall issue to restrain picketing is the probability of violence in the particular circumstances involved. The decisions legitimatizing peaceful picketing in labor disputes have been based in part upon the proposition that picketing can be carried on in such manner as not imminently to endanger the public peace and safety, and in part upon the further proposition that the likelihood of violence in picketing in labor disputes is not sufficient to overweigh the public interest in picketing as one means of accomplishing improvement of labor conditions. In the instant case, the factor of the likelihood of violence operates I think to require an opposite conclusion. The dispute here is in essence and emphasis not a labor dispute but a racial dispute. True, it is a racial dispute concerning hiring, and has thus in a board sense to do with a question of labor; but this does not make it less racial in essence and in insistence. Violence in racial disputes is, as a matter of common knowledge, highly probable. Therefore, as a matter of public policy, picketing in such disputes cannot be justified, even though in its inception, as in the instant case, it is actually peaceful."

The relationship of employer and employee must exist, or a dispute must grow out of that relationship before the Labor Disputes Act of March 23, 1932, 47 Stat. 70, has application.

In *United Electric Coal Companies* v. *Rice et al.*, 80 Fed. (2d) 1, certiorari denied 297 U. S. 714, the Court in determining whether or not the Labor Disputes Act of March 23, 1932, prohibited the issuance of an injunction where the dispute was between two rival labor unions, used the following language in holding that the relationship of employer and employee must exist before the act is applicable:

> "Appellant is the innocent bystander, a victim of this unabated conflict. Appellant has no dispute with its employees. The wage scales in force apparently were satisfactory to employer and employee alike. The working conditions brought no discontent. The employees were desirous of working for appellant. With them the appellant wish to operate its mine. This has been prevented by the struggle between the two unions over who should represent the employees." • • • "Do the facts present a case 'growing out of a labor dispute' or which is 'involved in a labor dispute,' as those two phrases are used in the Act?
>
> "Looking to the purpose, as well as to the words, of the Act, we are satisfied that the term 'labor dispute' should be more broadly and liberally construed. The term 'labor disputes' comprehends disputes growing out of labor relations. It infers employment—implies the existence of the relation of employer and employee. Disputes between these parties are the general subject matter of this legislation. All such disputes seem to be clearly included.
>
> "Equally clear we think must be the conclusion that the dispute referred to in the statute must be one between the employer and the employee or growing directly out of their relationship. It does not apply to disputes between employees or to disputes between employee unions to which the employer is not a party. The employer is not precluded from invoking the jurisdiction of a Federal Court of equity unless it appears

that in some way it was a party to the dispute, between two unions."

And in *Keith Theatre* v. *Vachon,* decided in 1936 by the Supreme Court of Maine, 187 A. 692, it was held:

> "Social welfare does not demand that nonrelated persons or organizations shall have the right, even by peaceable picketing, to attempt to break down and destroy a satisfactory relationship between an employer and its employees in order to supplant it by another whose terms are satisfactory only to the dictators of it."

Law and Cases Cited by Petitioners Not Applicable to Instant Case.

An examination of cases cited by the petitioners herein in their brief clearly shows that a recognized labor union or unions or individual members thereof were involved and directly interested as parties to the causes, except in one case. No such facts exist in the case under review. No labor dispute exists between employer and employee or any union or even between the respondent and persons engaged in the same or competitive business.

The respondent had no pending dispute with any of its employees or any labor organization at the time of the institution of the suit under review herein. Respondent employs large numbers of negroes and it had no dispute with any of them. In view of the numerous statements made in petitioners' brief, such as page after page of tables and data relating to "Negro and Relief" and quotations from law reviews on current events, it would seem pertinent to observe that respondent herein now employs only persons who are members of recognized labor unions.

The sole case cited by petitioners which does not involve a labor dispute is that of the *Julie Baking Company* v. *Graymond,* 274 N. Y. Supp. 250, which was decided August 16, 1934, prior to the decision in the case of *Beck-Hazard*

Shoe Corp. v. *Johnson, supra,* by the same Court, and appears in the same volume of reports.

An examination of the *Julie Baking Company* opinion involved an uprising in the neighborhood caused by what was believed to be an exorbitant price fixed for bread. It in no sense involved a racial dispute and was in fact overruled by the *Beck case.*

The petitioners in their brief have quoted from *The Labor Injunction* (Frankfurter & Greene). There is not one statement therein which in any wise could be construed to support the contention of the petitioners that the rules applicable to labor disputes also apply to disputes which are racial in character.

A reading of the committee and conference reports of the Senate and House of Representatives of the United States discloses that the Congress intended the Labor Disputes Act to apply to labor and labor organizations only.

The Courts Below Did Not Err in Granting and Affirming the Injunction Against Picketing and Boycotting

Counsel for petitioners in their brief, on pages 5 and 11, emphasize the fact that they had a single person picketing on one day, but they ignore the fact that in their answer (R. p. 14) the "defendants admit that the defendant corporation has heretofore and prior to the acts herein complained of, picketed or expressed the intention of picketing two other stores of the plaintiff."

It will be further noted by the record (page 6) the respondent charged in its Complaint that there appeared in the Washington Tribune, a newspaper published in the District of Columbia for negroes, under date of April 7, 1936, an article which the defendants caused or permitted to be published, which read in part:

> "Pickets were stationed in front of the chain store branch in 1900 block of Eleventh Street, Northwest,

Wednesday afternoon, bearing signs reading 'Will Negroes Work Here?' The store opened to the public on Saturday. *A total of fifteen persons, including several prominent women, picketed during the first three days of the campaign.* On Saturday, the signs carried by the pickets read 'Buy Where You Can Work—No Negroes Employed in This Store—Stay Out Until Negro Clerks Are Hired.' It was reported that a 'comparative few thoughtless persons' made purchases at the new chain store.

"Because all of the active members of the New Negro Alliance or persons interested in the cause are employed during the day, it was decided that early evening canvassing of neighborhoods—with stores under ban would continue. Pickets would be placed in front of branches of the Sanitary chain on Saturdays, when the buying at the stores is calculated as being at peak." (Record, p. 7.) (Italics ours.)

The petitioners herein in their answer to the Bill of Complaint (R. 15) made *no denial of the truth of these statements* appearing in said Washington Tribune, their answer being "none of the defendants is connected with or exercises any control over the Washington Tribune or has caused or permitted the Washington Tribune to publish any article or articles whatsoever or in any wise acted in concert with the Washington Tribune in said publications."

It is clear from the aforegoing that there was a determined combination between the petitioners that they intended to further continue the picketing of the respondent's stores regardless of whether disorder or destruction of property might occur. Respondent's Bill of Complaint charged that: "The said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the plaintiff corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering

plaintiff's place of business; said defendants, their pickets or patrols are disorderely while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business." (Record, p. 3.)

The petitioners in their answer to the Bill of Complaint *"admit that the relation of employer and employees does not exist between plaintiff and any of them and that the defendants are not engaged in competitive business with plaintiff."*

It is respectfully contended that nowhere does it affirmatively appear in the records of this cause that the petitioner corporation is in any wise or in any sense a labor organization nor can it in any way rightfully claim to have any standing under the Norris-LaGuardia Labor Disputes Act, nor has it any possible justification in picketing, boycotting or causing the restruction of respondent's business. The decree granting an injunction in no sense requires the petitioners or anyone else to deal with the respondent's stores, but merely prohibits them from taking any affirmative threatening action.

Petitioners, Having Admitted the Act of Picketing the Stores of the Respondent, Were Properly Enjoined by the Trial Court

The petitioners, who conducted the picket and boycott of respondent's store, were not employees or representatives of employees or discharged employees, and, while their motives may have been good, their actions could but cause racial strife, with resultant violence, as "Violence in racial disputes is, as a matter of common knowledge, highly probable" (Record, p. 35; separate opinion of Mr. Justice

Stephens of the United States Court of Appeals for the District of Columbia, dissenting in part, but concurring in the affirmance of the injunction granted herein by the trial court).

The record shows that "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the plaintiff corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business;" (Record, p. 4).

> "There is and can be no such thing as peaceful picketing, any more than there can be chaste vulgarity, or peaceful mobbing, or lawful lynching" (*Jonas Glass Co.* v. *Glass Bottle Blowers' Asso.*, 72 N. J. Eq. 653).

And in the case of *Pierce* v. *Stablemen's Union*, 165 Cal. 70, it was said at page 79:

> "A picket, in its very nature, tends to accomplish, and is designed to accomplish, these very things. It tends and is designed by physical intimidation to deter other men from seeking employment in the places vacated by strikers. It tends and is designed to drive business away from the boycotted place, not by legitimate methods of persuasion, but by the illegitimate means of physical intimidation and fear. Crowds naturally collect, disturbances of the peace are always imminent and of frequent occurrence. Many peaceful citizens, men and women, are always deterred by physical trepidation from entering places of business so under a boycott patrol. It is idle to split hairs upon so plain a proposition, and to say that the picket may consist of nothing more than a single individual peacefully endeavoring by persuasion to prevent customers from entering the boycotted place. The plain facts are always at variance with such refinements of reason."

Petitioners have cited in their brief the case of *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184. It will be noted that said case, decided by Mr. Chief Justice Taft, involved a *labor dispute* in which plaintiff operated "an open shop, did not recognize organized labor and would not deal with the committee," and yet, even in that case, so involving a labor dispute, the Chief Justice said "the name 'picket' indicated a militant purpose inconsistent with peaceable persuasion."

It will be further noted that the observer permitted in the *American Steel Foundries case* was for the purpose of inducing employees to leave their employment, while in the cause at bar *the picket is directed solely at the ruination of respondent's business.*

In a well reasoned opinion in *Elkind and Sons, Inc., et al.*, v. *Retail Clerks International Protective Association et al.*, 169 Atl. 494, a New Jersey Chancery decision, decided December 6, 1933, the Court said in part:

> "The defendants sought to hide their real purpose behind the pretense that they were seeking to advance the interests of the employees; but this was a service unsought and unasked for by them. It may have been acquiesced in by some, but it was forced upon most of them. The strike agitators were mere volunteers. They sought mainly to advance their own personal interests by demonstrating to their superiors their usefulness in inciting strikes, and their ability to enforce their demands. They assumed the role of those aptly characterized by Vice-Chancellor Fallon in *Bayonne Textile Corp. v. American Federation of Silk Workers et al.*, 114 N. J. Eq. 307, 168 Atl. 799, 803, as 'intermeddlers'. * * *"

The same opinion quotes from the case of *Truax* v. *Corrigan*, 257 U. S. 312:

> "We held that under these clauses picketing was unlawful and that it might be enjoined as such, and that peaceful picketing was a contradiction in terms."

The opinion in the *Elkind case* further states:

> "Picketing is a militant word and the act of picketing is militant in both character and purpose. Its purpose, compulsion or coercion, is accomplished only by intimidation. * * *"

> "Picketing in its mildest form is said to be a nuisance. And a private nuisance, regardless of its intimidating character or effect, will be enjoined," citing *Jonas Glass Co.* v. *Glass Bottle Blowers' Asso., supra.*

The question of picketing was very fully discussed in the case of *Beck* v. *Teamsters' Protective Union,* 118 Michigan 520, in which the Court said in part:

> "To picket complainant's premises in order to intercept their teamsters or persons going there to trade is unlawful. It itself is an act of intimidation, and an unwarrantable interference with the right of free trade. The highways and public streets must be free for all for the purpose of trade, commerce, and labor. The law protects the buyer, the seller, the merchant, the manufacturer, and the laborer in the right to walk the streets unmolested. It is no respecter of persons, and it makes no difference, in effect, whether the picketing is done 10 or 1000 feet away.
>
> "It will not do to say that these pickets are thrown out for the purpose of peaceable argument and persuasion. They intended to intimidate and coerce. * * *"

The proposition is well established that a combination looking towards the domination or ruination of the business of another by fraud, violence or coercion is fundamentally unlawful.

> *Waitresses Union, Local No. 249, et al.,* v. *Benish Restaurant Company, Inc.,* 6 F. (2d) 568.
>
> *Kinloch Telephone Company* v. *Local Union No. 2,* 275 Fed. 241.
>
> *Quinlivan, et al.,* v. *Dail-Overland Company, et al.,* 274 Fed. 56.

Petitioners have cited the case of *American Federation of Labor* v. *Buck's Stove and Range Co.*, 33 App. D. C. 83, and in their very language support the position taken by the respondent, that injunction lies against interference with business in cases in which there is violence or the *coercion or intimidation of customers.*

The case of *King et al.* v. *Weiss Company*, 266 Fed. 257, is further authority to sustain the decision below. In the *King case white* workers in a plant struck and acts of intimidation which prevented *colored* employees from working were restrained, although such acts would not necessarily have prevented white workers from continuing in employment; the case being one of intimidation, and the timid being entitled to protection against unlawful threats and intimidation, even though the acts would not be sufficient to affect bolder persons.

CONCLUSION

Counsel for respondent submit: there is no labor dispute involved herein as comprehended by the Norris-LaGuardia Act; this Court has never condoned picketing except in a bona fide labor dispute and no such dispute exists in this cause; that permitting petitioners herein to engage in unlimited picketing would establish a precedent the effect of which could completely disrupt the business and activities of the entire community, as "if petitioners are upheld in picketing in this case, they might picket any private residence which employed white rather than negro servants. The illustration indicates the extreme to which the contention of the petitioners, if upheld, might be carried" (R. p. 27); this is solely a racial dispute and the issuance of the injunction granted herein should be upheld and affirmed.

Respectfully submitted,

A. Coulter Wells,
William E. Carey, Jr.,
Counsel for Respondent.

p. 5,

SUPREME COURT OF THE UNITED STATES.

No. 511.—October Term, 1937.

The New Negro Alliance, et al., Petitioners, vs. Sanitary Grocery Co., Inc.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 28, 1938.]

Mr. Justice Roberts delivered the opinion of the Court.

The matter in controversy is whether the case made by the pleadings involves or grows out of a labor dispute within the meaning of Section 13 of the Norris-LaGuardia Act.[1]

The respondent, by bill filed in the District Court of the District of Columbia, sought an injunction restraining the petitioners and their agents from picketing its stores and engaging in other activities injurious to its business. The petitioners answered, the cause was heard upon bill and answer, and an injunction was awarded. The United States Court of Appeals for the District of Columbia affirmed the decree.[2] The importance of the question presented and asserted conflict with the decisions of this and other federal courts moved us to grant certiorari.

As the case was heard upon the bill and a verified answer the facts upon which decision must rest are those set forth in the bill and admitted or not denied by the answer and those affirmatively set up in the answer.

The following facts alleged in the bill are admitted by the answer. Respondent, a Delaware corporation, operates 255 retail grocery, meat, and vegetable stores, a warehouse and a bakery in the District of Columbia and employs both white and colored persons. April 3, 1936, it opened a new store at 1936 Eleventh Street, N. W., installing personnel having an acquaintance with the trade in the vicinity. Petitioner, The New Negro Alliance, is a corporation composed of colored persons, organized for the mutual improvement of its members and the promotion of civic, educational, benevolent, and charitable enterprises. The individual petitioners are officers of the corporation. The relation of employer and employes

[1] Act of March 23, 1932, c. 90, 47 Stat. 70, 73, U. S. C. Tit. 29, § 113.
[2] 93 F. (2d) 510, 65 W. L. R. 874.

does not exist between the respondent and the petitioners or any of them. The petitioners are not engaged in any business competitive with that of the respondent, and the officers, members, or representatives of the Alliance are not engaged in the same business or occupation as the respondent or its employes.

As to other matters of fact, the state of the pleadings may be briefly summarized. The bill asserts: the petitioners have made arbitrary and summary demands upon the respondent that it engage and employ colored persons in managerial and sales positions in the new store and in various other stores; it is essential to the conduct of the business that respondent employ experienced persons in its stores and compliance with the arbitrary demands of defendants would involve the discharge of white employes and their replacement with colored; it is imperative that respondent be free in the selection and control of persons employed by it without interference by the petitioners or others; petitioners have written respondent letters threatening boycott and ruination of its business and notices that by means of announcements, meetings and advertising the petitioners will circulate statements that respondent is unfair to colored people and to the colored race and, contrary to fact, that respondent does not employ colored persons; respondent has not acceded to these demands. The answer admits the respondent has not acceded to the petitioners' demands, but denies the other allegations and states that the Alliance and its agents have requested only that respondent, in the regular course of personnel changes in its retail stores, give employment to negroes as clerks, particularly in stores patronized largely by colored people; that the petitioners have not requested the discharge of white employes nor sought action which would involve their discharge. It denies the making of the threats described and alleges the only representations threatened by the Alliance or its authorized agents are true representations that named stores of the respondent do not employ negroes as sales persons and that the petitioners have threatened no more than the use of lawful and peaceable persuasion of members of the community to withhold patronage from particular stores after the respondent's refusal to acknowledge petitioner's requests that it adopt a policy of employing negro clerks in such stores in the regular course of personnel changes.

The bill further alleges that the petitioners and their authorized representatives "have unlawfully conspired with each other

to picket, patrol, boycott, and ruin the Plaintiff's business in said stores, and particularly in the store located at 1936 Eleventh Street, Northwest" and, "in an effort to fulfill their threats of coercion and intimidation, actually have caused the said store to be picketed or patrolled during hours of business of the plaintiff, by their members, representatives, officers, agents, servants, and employees;" the pickets carrying large placards charging respondent with being unfair to negroes and reading: "Do your Part! Buy Where You Can Work! No Negroes Employed Here!" for the purpose of intimidating and coercing prospective customers from entering the respondent's store until the respondent accedes to the petitioners' demands. "Said defendants, their pickets or patrols or some of them have jostled and collided with persons in front of the said store and have physically hindered, obstructed, interfered with, delayed, molested, and harassed persons desiring to enter the place of business of the Plaintiff Corporation; said pickets, or some of them, have attempted to dissuade and prevent persons from entering plaintiff's place of business; said defendants, their pickets or patrols are disorderly while picketing or patrolling, and attract crowds to gather in front of said store, and encourage the crowds or members thereof to become disorderly, and to harass, and otherwise annoy, interfere with and attempt to dissuade, and to prevent persons from entering the place of business of the plaintiff, the disorder thereby preventing the proper conduct of and operation of the plaintiff's business. Defendants have threatened to use similar tactics of picketing and patrolling as aforesaid in front of the several other stores of the plaintiff." Four photographs alleged to portray the picketing are annexed as exhibits to the bill. One of them shows a man carrying a sandwich placard on the sidewalk and no one else within the range of the camera. In another two children are seen beside the picket; in another two adults; in the fourth one adult entering respondent's store at a distance from the picket and without apparent interference. The answer denies all these allegations save that it admits the petitioners did, during April 4, 1936, and at no other time, cause the store at 1936 Eleventh Street, N. W. to be continuously picketed by a single person carrying a placard exhibiting the words quoted by the bill; and the petitioners, prior to the acts complained of in the bill, picketed, or expressed the intention of picketing, two other stores. It admits that the photographs correctly represent

the picketing of April 4, 1936. The answer avers the information carried on the placards was true, was not intended to, and did not in fact, intimidate customers; there was no physical obstruction, interference or harassment of anyone desiring to enter the store; there was no disorderly conduct, and the picketing did not cause or encourage crowds to gather in front of the store.

The bill states: "As evidence of the widespread and concerted action planned by the Defendants herein, they have caused to be placed or have permitted to appear in the Washington Tribune . . . the following statements . . ." There follow quotations from articles appearing in the newspaper purporting to report meetings of the Alliance and speeches made thereat. There is no statement that the facts reported in the articles are true. The answer denies that any of the petitioners is connected with or exercises any control over the Washington Tribune or caused or permitted that newspaper to publish any article or news item whatsoever or in any way acted in concert with the newspaper in those publications.

The bill asserts that petitioners and their representatives, officers, and agents, unlawfully conspired to picket, boycott, and ruin the respondent's business in its stores, particularly the store at 1936 Eleventh Street. This is denied by the answer.

The bill says that the described conduct of petitioners will continue until respondent complies with petitioners' demands; is and will continue to be dangerous to the life and health of persons on the highway, to property thereon, and to respondent's employes, its property, and business and will cause respondent irreparable injury; the petitioners' acts are unlawful, constitute a conspiracy in restraint of trade, and, if continued, will ruin the respondent's business. The answer denies these allegations so far as they constitute assertions of fact.

The case, then, as it stood for judgment, was this: The petitioners requested the respondent to adopt a policy of employing negro clerks in certain of its stores in the course of personnel changes; the respondent ignored the request and the petitioners caused one person to patrol in front of one of the respondent's stores on one day carrying a placard which said: "Do Your Part! Buy Where You Can Work! No Negroes Employed Here!" and caused or threatened a similar patrol of two other stores of respondent. The information borne by the placard was true. The patrolling did not coerce or intimidate respondent's customers; did not physically obstruct, interfere with, or harass persons desiring to

No. 511. The New Negro Alliance et al., petitioners, *v.* Sanitary Grocery Co., Inc. It is ordered that the opinion in this cause be amended (1) by striking out the last three sentences in the first full paragraph on page 5 and substituting therefor the following: "The Court of Appeals thought that the dispute was not a labor dispute within the Norris-LaGuardia Act because it did not involve terms and conditions of employment such as wages, hours, unionization or betterment of working conditions, and that the trial court, therefore, had jurisdiction to issue the injunction. We think the conclusion that the dispute was not a labor dispute within the meaning of the Act, because it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions is erroneous.";

(2) By striking out of the second full paragraph on page 6 the first and second sentences and so much of the third sentence as reads: "In the first place" and starting a new sentence with a capital "T";

(3) By striking out the words "In the second place" in the fourth sentence in the second full paragraph on page 6 and beginning the sentence with a capital "T".

CORRECTION

enter the store, the picket acted in an orderly manner, and his conduct did not cause crowds to gather in front of the store.

The trial judge was of the view that the laws relating to labor disputes had no application to the case. He entered a decree enjoining the petitioners and their agents and employes from picketing or patrolling any of the respondent's stores, boycotting or urging others to boycott respondent; restraining them, whether by inducements, threats, intimidation or actual or threatened physical force from hindering any person entering respondent's places of business, from destroying or damaging or threatening to destroy or damage respondent's property and from aiding or abetting others in doing any of the prohibited things. In affirming this decree the majority of the Court of Appeals held that the case did not involve or grow out of a labor dispute within the meaning of the Norris-La Guardia Act. One member of the court thought that though the dispute involved terms and conditions of employment in respondent's business it was not within the Act because essentially a racial dispute. We hold that the Act applies and the trial court erred in ignoring its provisions regulating and limiting the exercise of the court's jurisdiction.

Subsection (a) of Section 13 provides: "A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; . . . or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined)." Subsection (b) characterizes a person or association as participating or interested in a labor dispute "if relief is sought against him or it and if he or it . . . has a direct or indirect interest therein, . . ." Subsection (c) defines the term "labor dispute" as including "any controversy concerning terms or conditions of employment, . . . regardless of whether or not the disputants stand in the proximate relation of employer and employe." These definitions plainly embrace the controversy which gave rise to the instant suit and classify it as one arising out of a dispute defined as a labor dispute. They leave no doubt that The New Negro Alliance and the individual petitioners are, in contemplation of the Act, persons interested in the dispute.[8]

[8] Compare Senn v. Tile Layers Union, 301 U. S. 468; Lauf v. Shinner & Co., No. 293, Oct. T. 1937.

In quoting the clauses of Section 13 we have omitted those that deal with disputes between employers and employes and disputes between associations of persons engaged in a particular trade or craft, and employers in the same industry. It is to be noted, however, that the inclusion in the definitions of such disputes, and the persons interested in them, serves to emphasize the fact that the quoted portions were intended to embrace controversies other than those between employers and employes; between labor unions seeking to represent employes and employers; and between persons seeking employment and employers.

Thus the nature of the dispute and the interest of the parties therein bring the case squarely within the Act unless, as suggested by the District Court and by one of the justices of the Court of Appeals, the case is taken out of the scope of the Act by the fact that the dispute is "racial". We think this cannot be so. In the first place, the Act does not concern itself with the background or the motives of the dispute. In the second place, the desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation. There is no justification in the apparent purposes or the express terms of the Act for limiting its definition of labor disputes and cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color.

The purpose and policy of the Act respecting the jurisdiction of the federal courts is set forth in Sections 4 and 7. The former deprives those courts of jurisdiction to issue an injunction against, *inter alia*, giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence; against assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; against advising or notifying any person of an intention to do any of the acts speci-

fied; against agreeing with other persons to do any of the acts specified.[4] Section 7 deprives the courts of jurisdiction to issue an injunction in any case involving or growing out of a labor dispute, except after hearing sworn testimony in open court in support of the allegations of the complaint, and upon findings of fact to the effect (a) that unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued, unless restrained, and then only against the person or persons, association or organization making the threat or permitting the unlawful act or authorizing or ratifying it; (b) that substantial and irreparable injury to complainant's property will follow; (c) that, as to each item of relief granted, greater injury will be inflicted upon the complainant by denial of the relief than will be inflicted on the defendant by granting it; (d) that complainant has no adequate remedy at law, and (e) that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.[5]

The legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act[6] respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act.[7] It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning "terms and conditions of employment" in an industry or a plant or a place of business should be lawful; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices.[8] The District Court erred in not complying with the provisions of the Act.

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[4] U. S. C. Tit. 29, § 104.

[5] U. S. C. Tit. 29, § 107.

[6] Act of Oct. 15, 1914, c. 323, § 20, 38 Stat. 730, 738, U. S. C. Tit. 29, § 52.

[7] Duplex Printing Press Co. v. Deering, 254 U. S. 443; American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184. Compare House Report No. 669, 72nd Cong., 1st Sess. and Senate Report 1060, 71st Cong., 2nd Sess. and Senate Report 163, 72nd Cong., 1st Sess.

[8] Compare Senn v. Tile Layers Union, 301 U. S. 468; Levering and Garrigues Co. v. Morrin, 71 F. (2d) 284; Cinderella Theatre Co. v. Sign Writers Local, 6 F. Supp. 164; Miller Furniture Co. v. Furniture Workers Union, 8 F. Supp. 209.

The decree must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

Mr. Justice MCREYNOLDS, dissenting.

Mr. Justice BUTLER and I cannot accept the view that a "labor dispute" emerges whenever an employer fails to respond to a communication from A, B and C—irrespective of their race, character, reputation, fitness, previous or present employment—suggesting displeasure because of his choice of employes and their expectation that in the future he will not fail to select men of their complexion.

It seems unbelievable that, in all such circumstances, Congress intended to inhibit courts from extending protection long guaranteed by law and thus, in effect, encourage mobbish interference with the individual's liberty of action. Under the tortured meaning now attributed to the words "labor dispute", no employer—merchant, manufacturer, builder, cobbler, housekeeper or what-not—who prefers helpers of one color or class can find adequate safeguard against intolerable violations of his freedom if members of some other class, religion, race or color demand that he give them precedence.

Design thus to promote strife, encourage trespass and stimulate intimidation, ought not to be admitted where, as here, not plainly avowed. The ultimate result of the view now approved to the very people whom present petitioners claim to represent, it may be, is prefigured by the grievous plight of minorities in lands where the law has become a mere political instrument.

See—definition of Dispute, Webster's New International Dictionary; 29 U. S. C. A. § 113(c); Senate Report No. 163, 72nd Congress, 1st Session, pp. 7, 11, 25; House Report No. 669, 72nd Congress, 1st Session, pp. 3, 7, 8, 10, 11.